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Johnstown, N.Y. - Charter
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Charter of the City of Johnstown,
New York, being Chapter 593 of the
Laws of 1905, Entitled, "An Act to
Revise the Charter of the City of
Johnstown." With Amendments.

1917

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The Charter of the City of Johnstown.

- Article I. Incorporation; city and ward boundaries; definitions; (§§ 1-6.)
- II. City officers; election; appointment; qualifications; terms; compensation; vacancies. (§§ 10-28.)
- III. Mayor, city clerk and common council. (§§ 40-58.)
- IV. Chamberlain; finance; tax budget and bonds. (§§ 60-78.)
- V. Assessment and collection of taxes. (§§ 90-115.)
- VI. Local improvement; street and sewers. (§§ 140-146.)
- VII. Board of water commissioners; water works. (§§ 160-188.)
- VIII. Police department. (§§ 190-196.)
- IX. Fire department; fire limits. (§§ 200-213.)
- X. Board of education; schools. (§§ 220-241.)
- XI. Board of health; city physician; charities. (§§ 250-254.)
- XII. The recorder; general powers, including criminal jurisdiction. (§§ 260-269.)
- XIII. City court. (§§ 280-296.)
- XIV. City attorney; actions by and against city. (§§ 300-304.)
- XV. Miscellaneous provisions. (§§ 310-318.)

ARTICLE I.

INCORPORATION; CITY AND WARD BOUNDARIES; DEFINITIONS.

Section 1. Short title.

2. Boundaries of the city.
3. Division into wards; ward boundaries.
4. Corporate name and powers.
5. Official and fiscal year.
6. Definitions.

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Section 1. **Short title.** This act shall be known as "the charter of the city of Johnstown."

§ 2. **Boundaries of the city.** All that part of the county of Fulton included within the following boundaries shall constitute the city of Johnstown, to-wit: Beginning at a stone monument in the center of State street, near what is known as Johnson hall, at its intersection with Johnson avenue; thence along the center of said Johnson avenue north thirtynine degrees east one thousand and sixty-one feet to an iron pin; thence along the center thereof north thirty-three degrees east one thousand eight hundred feet to an iron pin standing in the center of said highway at the cross roads; thence north forty-five degrees and fifteen minutes east four thousand five hundred and forty-eight feet to a stone monument in the northerly line of the highway leading from the Johnstown and Gloversville plank road, near the toll gate, past L. K. Maylender's residence and mill, towards Bennett's Corners; thence north eighty-five degrees and eighteen minutes east three thousand one hundred and fifty-four feet to a stone monument, at the intersection of the southerly line of Gloversville's corporation line; thence south twenty-two degrees and thirty minutes east five hundred and forty-five feet to a stone monument on the southerly line of the Johnstown and Gloversville plank-road; thence south six degrees and twenty-three minutes east four thousand two hundred and thirty-two feet to a point near the division line between lands of Myron Berry and lands lately owned by Edward Ecker; thence south six degrees and twenty minutes west two thousand four hundred and seventeen feet to a point in the northerly line of what is known as the Broadalbin road, and near what is known as the Eacker lane; thence south nineteen degrees and thirty-six minutes west five thousand and seventy-eight feet to a stone monument near the division line between lands of Comrie and Selmser, and near the Saint Patrick's cemetery; thence south forty-three degrees and fifty minutes west three thousand seven hundred and five feet to a stone monument near the division line of lands of Joseph Thyne and Edwards' estate; thence north eighty-seven degrees and forty-five minutes west five thousand five hundred and eighty feet to a stone monument at the intersection of the east line of Franklin street in Nare addition and the northerly line of Union avenue; thence north three degrees east along the east line of said Franklin street, two thousand six hundred and eighty and four-tenths feet to a stone monument on the southerly line of the right of way of the Fonda, Johnstown and Gloversville Railroad Company; thence north twelve degrees and twenty minutes east five thousand nine hundred and ninety-two and one-half feet to the place of beginning.

§ 3. **Division into wards; ward boundaries.** The said city shall be divided into four wards, bounded respectively as follows:

First ward. All that part of said city bounded southerly by the center

line of West Main street, commencing at its intersection with the center line of North Market street, and thence running westerly to the western boundary of said city; easterly by the center line of North Market street to the center line of Matthews street; thence westerly along the center line of Matthews street to the center line of Mill street; thence northerly along the center line of Mill street and the center line of Mill street as proposed to be extended northerly to Maple avenue; thence northerly along the center line of a street proposed to be laid out from Maple avenue northerly, on a line with the center line of Mill street as proposed to be extended, to the center line of Reid avenue, thence along the center line of Reid avenue, in accordance with the map thereof heretofore filed in the clerk's office of the village of Johnstown, to the northern boundary of the city; and northerly and westerly by the northern and western boundaries of the city.

Second ward. All that part of said city bounded southerly by the center line of West Main street, commencing at the intersection with the center line of North Market street, thence easterly to the center line of East Main street, thence by the center line of East Main street to the eastern boundary of the city; easterly and northerly by the eastern and northern boundaries of the city; westerly by the eastern boundary of the first ward.

Third ward. All that part of said city bounded northerly by the southern boundary of the second ward; easterly and southerly by the eastern and southern boundaries of the city; and westerly by the east line of South Market street, commencing at its intersection with the center line of West Main street, thence southerly to and across West Montgomery street to and along the east line of the proposed extension of South Market street to the southern boundary of the city.

Fourth ward. All that part of said city bounded northerly by the center line of West Main street, commencing at its intersection with the east line of South Market street and running thence westerly to the western boundary line of the city; westerly and southerly by the western and southern boundaries of the city, and easterly by the western boundary of the third ward.

* § 1. **Corporate name and powers.** The inhabitants within the boundaries herein prescribed shall be a municipal corporation by the name of the city of Johnstown. Such corporation may:

1. Take, purchase, hold and convey such real and personal property as the purposes of the corporation may require;

2. Receive by gift, grant, bequest and devise, and hold real and personal estate in trust for any purpose of education, art, health, charity or amusement, or for parks, cemeteries or other public use, and for the erection of statues, monuments and public buildings, upon such terms as may be

* As amended by Chapter 266, Laws of 1911.

prescribed by the grantor or donor and accepted by such corporation, and provide for the proper execution of such trusts;

3. Take, purchase and hold real property without the boundaries herein prescribed, or any easement or right therein, which such corporation may require or deem necessary for the purpose of constructing, operating or maintaining a sewer, sewer outlet or sewage disposal plant; and in case of the inability of said corporation to agree with the owner or owners for the purchase of such real property, easement or right, to acquire the necessary title to such real property, or any easement or right therein, by condemnation in the mode prescribed in title one of chapter twenty-three of the code of civil procedure;

4. Sue and be sued, complain and defend in any court;

5. Use the present public seal of said city as its common seal, and alter it at pleasure;

6. Possess such other powers as may be conferred by law upon cities and municipal corporations not inconsistent with this act; and

7. Do anything necessary to carry into effect the powers granted to it.

§ 5. **Official and fiscal year.** The official and fiscal year of the city shall commence with the first day of January in each year.

§ 6. **Definitions.** The term streets, as used in this act, includes highways, avenues, alleys and lanes. The word person, as used in this act, includes persons, firms, companies, corporations and joint stock associations. The term ordinance, as used in this act, includes all legislative acts of the common council, except those adopted by it to govern its own proceedings. The term resolution, as used in this act, includes all motions, orders, rules, regulations and by-laws other than ordinances of the common council.

ARTICLE II.

CITY OFFICERS; ELECTION; APPOINTMENT; QUALIFICATIONS; TERMS; COMPENSATION; VACANCIES.

Section 10. City officers.

11. Manner of choosing city officers.
12. Terms of office.
13. Commencement and expiration of terms of office.
14. Eligibility.
15. City elections.
16. Canvass of votes by common council.
17. Certificates of appointment.
18. Notice to persons elected or appointed.

19. Official oaths.
20. Official bonds.
21. Compensation of city officers.
22. Fees and perquisites.
23. Vacancies.
24. Suspensions and removals of appointive city officers.
25. Officers not to be interested in contracts or purchases.
26. Delivery of property, books and papers to successor.
27. Officers authorized to administer oaths and to take affidavits and acknowledgments.
28. Supervisors; preparation of jury lists.

* § 10. **City officers.** The elective officers of the city shall be a mayor, a recorder, a chamberlain, an assessor, nine members of the board of education, one alderman-at-large, and one water commissioner-at-large; and two aldermen, one water commissioner and one supervisor for each ward. The appointive officers of said city shall be a city clerk, a superintendent of streets, a superintendent of water works, a city attorney, a city engineer, an acting recorder, a city physician who shall also be the health officer of the city, a commissioner of charities, a city board of health consisting of six members, an inspector of plumbing, a chief engineer of the fire department, and a first assistant and second assistant engineer of the fire department, a chief of police and such number of regular uniformed policemen as the common council shall fix at the first meeting in each year, and such other special policemen as are hereinafter provided for, and not to exceed ten commissioners of deeds, and such other appointive officers as may be authorized by general laws.

§ 11. **Manner of choosing city officers. The mayor, recorder, chamberlain, assessor, members of the board of education, alderman-at-large and water commissioner-at-large shall be elected by ballot by the qualified electors of the city. The aldermen and water commissioner and supervisor for each ward shall be elected by ballot by the qualified electors thereof. The city clerk shall be appointed by the common council and the board of water commissioners in joint session. The superintendent of streets shall be appointed by the common council. The superintendent of water works shall be appointed by the board of water commissioners. The city attorney, the city engineer, and the city physician shall each be appointed by the mayor subject to the confirmation of the common council. The commissioner of charities shall be appointed by the mayor. The members

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 660, Laws of 1910 and Chap. 326, Laws of 1916.

of the board of health shall be appointed by the common council upon the nomination of the mayor in the manner and for the terms prescribed by the public health law. The chief engineer of the fire department, the first assistant and the second assistant engineer of the fire department, the acting recorder, the chief of police, policemen and special policemen shall be appointed as hereinafter provided. The commissioners of deeds shall be appointed by the common council from time to time as may be deemed necessary. Appointments for a full term, in any official year in which appointments are to be made for such term, shall be made as follows: If by the mayor, at the first meeting of the common council in such year; if by the common council, at its first meeting in such year; if by the mayor with the confirmation of the common council, at such first meeting or at a time not later than the fourteenth day of January to which such meeting shall have been adjourned; if by the common council and the board of water commissioners acting jointly, the appointment shall be made at a joint session of such bodies to be held on the first day of January in such official year or, in case such day falls on Sunday, on the next day thereafter. The inspector of plumbing shall be appointed by the board of health of the city on or before the fifteenth day of January. Except as otherwise provided in this act no appointment for a full term shall be made at a time other than as above prescribed. Appointments to fill vacancies shall be made as provided in section twenty-three of this act.

* § 12. **Terms of office.** The term of office of the mayor, recorder, chamberlain, assessor, aldermen and alderman-at-large, water commissioners and water commissioner-at-large, supervisors, chief engineer of the fire department, and commissioners of deeds shall be two years. The term of office of the members of the board of education shall be three years. The term of office of the city clerk, city attorney, city engineer and of the city physician and health officer shall be two years. The term of office of the superintendent of streets, superintendent of water works, the first assistant engineer and second assistant engineer of the fire department shall be one year. The commissioner of charities shall serve for a term which shall expire with the expiration of the term of office of the mayor. The chief of police and each of the regular uniformed policemen now or hereafter appointed shall hold their respective offices during competency and good behavior and until removed in the manner as provided in section twenty-four of this act; said section being hereby made applicable to the chief of police in the same manner as if said chief of police was one of the uniformed policemen.

§ 13. **Commencement and expiration of terms of office. The term of office of each elective officer shall commence with the first day of January

* As amended by Chap. 660, Laws of 1910 and Chap. 326, Laws of 1916.

** As amended by Chap. 660, Laws of 1910 and Chap. 326, Laws of 1916.

succeeding his election. The term of office of each appointive officer, except the commissioner of charities, the chief of police, and each of the regular uniformed policemen, shall commence with the fifteenth day of January of the official year in which the appointment is required to be made. The term of office of the commissioner of charities, of the chief of police, and of each of the regular uniformed policemen shall commence on the first day of January of such year. Each city officer shall hold over after the expiration of his term and until his successor is chosen and has qualified. The term of office of the supervisors shall commence and expire at the same time as the terms of supervisors of the towns of the county of Fulton.

§ 14. **Eligibility.** No person shall be eligible to a city office unless at the time of his election or appointment he is a resident elector of the city, except that the city engineer need not reside therein; and if elected by a ward of said city, unless at the time of his election he is also a resident of the ward for which he shall be elected. If a city officer shall cease to be a resident of the city his office shall thereupon become vacant. If a city officer elected by a ward of the city shall cease to be a resident of such ward, his office shall thereupon become vacant. A recorder hereafter elected shall at the time of his election have been admitted to practice in this state as an attorney at law for a period of three years. No person shall at the same time hold more than one office under this act except as otherwise provided therein. But a commissioner of deeds may also hold any other city office, and one of the supervisors of the city may be appointed as commissioner of charities.

§ 15. **City elections.** A general city election shall be held annually on the Tuesday next succeeding the first Monday in November at the time and at the places fixed for holding the general election. There shall be elected at each general city election successors to all elective city and ward officers whose terms will expire before the date of the next general election, and vacancies in elective offices shall be filled at such election as hereinafter authorized. Such election shall be conducted, and the votes cast thereat canvassed by the inspectors, and the returns thereof made, in the manner provided by the Election Law. Except as hereinafter otherwise provided the election law shall apply to and govern all elections in said city.

§ 16. **Canvass of votes by common council.** The common council shall meet as a board of city canvassers on the next Monday after each annual city election. The city clerk shall present to the common council at such meeting the certified statements of the results of such election in the several election districts of the city, as delivered to him by the inspectors of election. The common council shall canvass such certified statements and determine and declare the whole number of votes cast for all the candidates for each office to be filled at such election, the num-

ber of votes cast for each such candidate, and what person was elected thereto. The persons having the greatest number of votes for the respective offices to be filled by the whole city, and those having the greatest number of votes for the offices to be filled by the several wards shall be declared duly elected, and the common council shall thereupon make duplicate certificates in writing of all those who were duly elected at said election, to the various offices voted for at said election, one of which certificates shall be filed with the city clerk and the other with the clerk of Fulton County. Such canvass shall be made so far as practicable in the same manner as a canvass by a county board of canvassers, and the provisions of the election law relating to a canvass by a county board of canvassers shall apply to a canvass by the common council.

§ 17. **Certificates of appointment.** All appointments to city offices made as prescribed in this act shall be evidenced by a certificate in writing, signed by the appointing officer, and filed forthwith in the office of the city clerk. If an appointment be made by the common council, the board of water commissioners, or the common council and the board of water commissioners acting jointly, such certificate shall be signed by the officer presiding at the time the appointment was made, and attested by the city clerk.

§ 18. **Notice to persons elected or appointed.** The city clerk shall give notice, in writing, to every person elected or appointed to any office under this act of his election or appointment, within twenty-four hours after the certificate of his election or appointment has been filed in his office, which notice shall be served personally or by leaving it at the residence of such person.

* § 19. **Official oaths.** Every city officer shall, before he enters upon the duties of his office, take and file his official oath in accordance with the constitution and public officers law, and for an omission so to do, he shall be subject to the liabilities and penalties prescribed by the penal law, and of the public officers law. The mayor, city clerk, recorder and each commissioner of deeds shall before he is qualified to administer oaths and take and certify affidavits and acknowledgments, take and subscribe the constitutional oath of office before the clerk of the county of Fulton.

§ 20. **Official bonds. The city clerk, city engineer, commissioner of charities, recorder, chief of police, and each regular uniformed policeman, shall, before he enters upon the duties of his office, execute and file an official bond in accordance with the public officers law, and for an omission so to do he shall be subject to the penalties and liabilities prescribed by the penal law, and public officers law. Except as herein otherwise pro-

* As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

** As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

vided the penal sum named in any such bond, or the sum specified in any such undertaking as the maximum amount of liability thereon shall be fixed by the common council.

*** § 21. Compensation of city officers.** The annual salary of the mayor, recorder, chamberlain, city clerk, city attorney, city engineer, commissioner of charities, superintendent of streets, city physician, and the assessor shall be fixed by the common council, by a two-thirds vote, at their first meeting held after this act shall become a law, and thereafter at the first meeting held in the year nineteen hundred and seventeen, and thereafter at a meeting held on or before October first in the year preceding the commencement of the term of office of each said officer. The supervisor of each ward shall be entitled to the same compensation for his services as the supervisor of a town is entitled to receive for like services. The inspectors of election, ballot clerks and poll clerks shall receive such compensation as the common council may fix, not exceeding, however, the sum of five dollars per day. No other city officer shall be entitled to receive from said city any compensation for his services unless otherwise provided by a general law or by this act. For the purpose of computing the compensation to which each officer is entitled his term of office shall be deemed to be the term of his actual service therein. The annual salary of the superintendent of water works shall be fixed by the board of water commissioners at their first regular meeting after this act shall become a law and thereafter at the first meeting in the year of the commencement of the term of office of said officer. The annual salaries as fixed shall be payable in monthly installments. Two-fifths of the salary of the chamberlain shall be paid by the common council from the contingent fund, two-fifths thereof by the board of water commissioners from the water fund, and one-fifth thereof by the board of education from the school fund. One-half of the salary of the city clerk shall be paid by the common council from the contingent fund, and one-half shall be paid by the board of water commissioners from the water fund. The salary of the city physician, both as city physician and health officer, and the salary of the commissioner of charities shall be paid from the poor fund.

****§ 21-a. Additional compensation may be given.** The board of water commissioners may, at any regular meeting, after this act shall become a law, by a two-thirds vote add to the salary of any city officer, whose duties require service for said board, such additional compensation as they may deem reasonable, the same to be paid from the water fund. This section shall be effective anything in said act contained to the contrary notwithstanding; the exercise of the power given under this section shall in no way affect any of the other provisions of said act.

* As amended by Chap. 661, Laws of 1910, and Chap. 326, Laws of 1916.

** Added by Chap. 326, Laws of 1916.

§ 22. **Fees and perquisites.** No city officer, except commissioners of deeds and city officers acting as commissioners of deeds, shall have or receive to his own use any perquisites, compensation or fees for services pertaining directly or indirectly, or which may hereafter be added, to the duties of his office, in addition to his salary or compensation, unless otherwise provided in this act; but any perquisite, compensation or fee legally chargeable for services performed by any such city officer shall be collected by him and paid into the city treasury to the credit of the contingent fund.

§ 23. **Vacancies.** Except as otherwise provided in this act, if a vacancy shall occur otherwise than by expiration of term in an elective city office, the common council shall fill such vacancy. If a vacancy occurs in an elective office prior to the time within which nominations for a general city election must be filed, the person appointed to fill such vacancy shall hold office until the end of the official year in which such vacancy occurs. If a vacancy in an elective office occurs subsequent to the time within which nominations for a city office must be filed, the person appointed to fill such vacancy shall hold office until the end of the next official year, if the term of office of the officer vacating his office extends through such year. If the term of office of the officer vacating his office continues beyond the official year in which said vacancy occurs and said vacancy occurs prior to the time within which nominations for a city office must be filed, a person shall be elected at the next annual city election after the occurring of such vacancy to fill such vacancy for the remainder of the unexpired term. A vacancy occurring in any appointive office of the city, otherwise than by expiration of term, shall be filled for the balance of the unexpired term by the same authorities and in the same manner as an appointment for a full term.

§ 24. **Suspensions and removals of appointive city officers.** The mayor may suspend, orally or by writing, for ten days or less, at any one time, any officer of said city appointed by the mayor, with the confirmation of the common council. In each case of such suspension the mayor shall forthwith report to the common council the reasons for such suspension. It shall be the duty of the common council forthwith to investigate the reasons for such suspension, giving the officer suspended reasonable notice thereof and a reasonable opportunity to be heard, and the common council shall remove such officer if, in their judgment, there be sufficient grounds therefor. Each officer appointed by the mayor, with the confirmation of the common council, may be removed by the common council for any cause by them deemed sufficient, upon charges, giving such officer reasonable notice thereof and a reasonable opportunity to be heard, and such officer may be suspended by the common council pending such investigation. Each city board may remove any city officer appointed by such board, upon charges, giving such officer reasonable

notice thereof and a reasonable opportunity to be heard, and such officer may be suspended by said board pending such investigation. The mayor may at any time suspend or remove any officer of said city appointed by the mayor to serve during the pleasure of the mayor, or for a term expiring with the expiration of the term of office of the mayor, but subject to removal at the pleasure of the mayor, by an order in writing to that effect, which said order shall be filed immediately in the office of the city clerk and a copy thereof, certified by said clerk, forthwith served upon the officer so suspended or removed. The common council and board of water commissioners may remove any city officer appointed by them in joint session, upon charges, giving such officer reasonable notice thereof and a reasonable opportunity to be heard, and such officer may be suspended by said boards acting jointly pending such investigation.

§ 25. **Officers not to be interested in contracts or purchases.** The mayor, or any member of the common council, board of water commissioners, board of education or board of health, or any superintendent, clerk, agent or employee of said city, or of any such boards, shall not be voluntarily interested, directly or indirectly, beyond the compensation which he may be justly entitled to for services by him actually rendered as such officer, agent or employee, in any contract or work made or done by, for or on behalf of said city, or any municipal board therein; nor shall any such person be voluntarily interested, directly or indirectly, in the purchase or sale of any merchandise, material, substance or supplies for any of the uses or purposes of said city, nor shall any such person receive therefrom or thereon, or in consideration, or in consequence thereof, any commissions, divisions, discounts, gift or moiety. The municipal board of said city shall not audit any account, or issue any warrant, for the payment of any claim for services rendered, or for work, labor, or materials furnished by any person during the time such person shall have held the office of mayor, alderman, or member of a municipal board of said city. A violation of any of the provisions of this section is a misdemeanor.

* § 26. **Delivery of property, books and papers to successor.** Each city officer shall upon the expiration of his term deliver to his successor in office all property, papers and effects of every description in his possession or under his control belonging to the city, and appertaining to such office. If he shall fail to do so within five days after notification and request by his successor, he shall be liable to a penalty of one hundred dollars, to be recovered by the city in a civil action together with all damages caused by his neglect or refusal, and he may also be proceeded against as provided by the penal law.

§ 27. **Officers authorized to administer oaths and to take affidavits**

* As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

and acknowledgments. The mayor and city clerk, recorder, chamberlain, and each commissioner of deeds who shall have taken and subscribed the constitutional oath of office before the county clerk of Fulton county as provided in this act may administer oaths, and take and certify affidavits and acknowledgments within the city of Johnstown.

* § 28. **Supervisors; preparation of jury lists.** The supervisors of the city of Johnstown shall be members of the board of supervisors of Fulton county. They shall have the powers and be subject to the duties of supervisors of towns under the general laws of the state, so far as they are consistent with the provisions of this act; and such laws, so far as they are applicable shall regulate their powers and duties. The supervisor of each ward and the city clerk shall perform the duties of the supervisor, town clerk and assessors of towns as provided by the judiciary law, respecting the selecting, drawing, and procuring the attendance of trial jurors, and for that purpose the city is to be deemed a town.

† § 29. **Additional duties of appointive officers.** It shall be the duty of every appointive city officer to perform, without extra compensation, any service which may be required of him by the common council, board of health, board of water commissioners, or other board of the city, where the service so required pertains to the general duties of his office as defined by general laws, by this act, or otherwise; this section shall not apply to any appointive officer receiving no compensation, nor to the city engineer, city attorney and city physician and health officer.

ARTICLE III.

MAYOR, CITY CLERK AND COMMON COUNCIL.

Section 40. General powers and duties of mayor.

41. Acting mayor.
42. General powers and duties of city clerk.
43. Aldermen.
44. Common council; how constituted and organized.
45. Presiding officer.
46. Meetings.
47. Rules; quorum; voting.
48. Compelling attendance of absent members.
49. Legislative powers of common council.

* As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

† Added by Chap. 660, Laws of 1910, Amended by Chap. 326, Laws of 1916.

1. Relating to peace and good order generally.
2. Care of property.
3. Use of streets generally.
4. Animals running at large; dogs.
5. Gambling and games of chance.
6. Vagrancy.
7. Noxious occupations.
8. Licensing occupations.
9. Advertisements and hand bills.
10. Obnoxious and dangerous practices.
11. Slaughter houses.
12. Markets and marketing.
13. Prevention or extinguishment of fires.
14. Lockups, police stations and police headquarters.
15. Public buildings and parks.
16. Maps.
17. Street names and lot numbers.
18. Deposit of offensive substances.
19. Sewers, drains and pipes.
20. Injury to trees, fences and other property.
21. Powers, duties and compensation of officers.
22. Division of city into districts.
23. Public offices and supplies.
24. Ordinances generally.
50. Improvement of streets and removal of nuisances at expense of owners.
51. Mayor's action on ordinances.
52. Time of taking effect of resolutions and ordinances; publication.
53. Records of ordinances and resolutions; evidence.
54. Violation of ordinances.
55. Licensing occupations.
56. Repairs of streets by turnpike and plank road and street railways.
57. Official newspapers.
58. Old cemetery grounds.

Section 40. **General powers and duties of mayor.** The mayor shall be the chief executive officer of the city. He shall:

1. Maintain the peace, good order and prosperity of the city;
2. Take care that the laws of the state and the ordinances and by-laws passed by the common council and the board of health are faithfully executed, and arrest or cause to be arrested all persons violating the same;
3. Call out and command the police and firemen of the city whenever in his discretion he shall deem it necessary, and such command shall be obeyed in all respects.
4. Exercise a constant supervision and control over the conduct of all city officers, and may examine at all times the books, vouchers and papers of any officer or employe of said city, and take and hear testimony and proofs in relation thereto, and require the attendance of witnesses to give such testimony and proof as provided in the Code of Civil Procedure.
5. Communicate to the common council during the month of January in each year, and as often in each year as he may deem expedient, a statement of the affairs of the city in relation to its finances, government and improvement, with such recommendations as he may deem proper. He may designate from time to time the place in said city where he will keep his office.

§ 41. **Acting mayor.** The alderman-at-large shall be, when the mayor is absent from the city or unable to perform his duties, the acting mayor, and have all the powers and be subject to all the obligations and liabilities of the mayor.

§ 42. **General powers and duties of city clerk.** The city clerk shall be ex officio clerk of the common council and of the board of water commissioners, and ex officio clerk and registrar of the board of health. He shall:

1. Keep the minutes of the meetings of the common council and of each board of which he is ex officio clerk, and record in books to be kept for the purpose all proceedings of the common council and of each such board, and index the same;
2. Have the custody and control of the corporate seal, books, papers, documents and official minutes of the city, except as otherwise provided by law;
3. Record and alphabetically index in a book provided for that purpose all bonds of city officers and all contractors' or other bonds running to the city or any of its officers, and note therein the date of filing each such bond;
4. Register in a book provided for that purpose all municipal bonds issued by the city or any of its officers. He shall enter in such book a description of all bonds issued by the village or town of Johnstown for any portion of which the city is liable, and of all bonds converted from coupon into registered bonds as authorized by law;
5. Make certified copies, upon request and payment of the fee there-

for, of all records and documents recorded in his office. He may affix the corporate seal of the city to any such certificate and such seal shall be deemed to be his official seal, and such certified copy shall be evidence as provided in the Code of Civil Procedure. He may demand and receive from any person other than a city officer fees for such certified copies at the rate of ten cents per folio;

6. Keep an accurate account of all fees and moneys received by him as such clerk or ex officio clerk, other than his salary, including fees received by him as registrar of the board of health, and pay the same within ten days after the receipt thereof to the city chamberlain to the credit of the contingent fund, and take a receipt therefor and file the same in his office. Such receipts shall, at all times, be subject to examination by the common council or any member thereof;

7. Perform such other duties incident to his office as may be required by the common council or by any board of which he is ex officio clerk.

§ 43. **Aldermen.** The alderman-at-large and each alderman shall attend the regular and special meetings of the common council; act upon committees to which he is appointed; arrest or cause to be arrested all persons violating in his presence the laws of the state or the city ordinances when such violations are made a crime by such laws or ordinances; report to the mayor all subordinate officers who are guilty of official misconduct or neglect of duty; aid in maintaining peace and good order in the city; and perform or assist in performing all such duties as are imposed by this act upon the aldermen of the city separately, or upon the common council thereof. The aldermen of each ward shall be fence viewers, and shall possess the powers and authority in respect to division fences or walls in their ward which are given by law to fence viewers of towns with respect to division fences, and shall be entitled to receive the same fees as fence viewers of towns.

§ 44. **Common council, how constituted and organized.** The common council shall be composed of the mayor and aldermen of the city. The common council shall meet annually in a room provided for that purpose on the first day of January, or if that be Sunday, then on the next day, at ten o'clock in the forenoon, for the purpose of organization. Such meeting shall be called the annual meeting of the common council. Upon such organization the common council as constituted for the preceding year shall be dissolved.

§ 45. **Presiding officer.** The mayor shall be the presiding officer of the common council, but shall have no vote therein except in a case of tie, when he shall have the casting vote. The alderman-at-large shall be the presiding officer of the common council in the absence of the mayor, but shall not lose his vote as alderman by reason of his acting as such presiding officer. When he shall vote as alderman he shall have no casting vote on a tie.

§ 46. Meetings. The common council shall hold regular meetings on the first and third Monday evenings in each month in the common council rooms, and at such other times as it shall by resolution designate. The mayor or any three aldermen may call a special meeting by causing a written notice thereof specifying the objects of the meeting, to be served by the city clerk upon each member of the common council, not joining in such notice, personally, or by mail, directed to his place of residence or place of business, at least twenty-four hours before the time for such meeting. All meetings of the common council shall be public, except when the public interest require secrecy; but no vote shall be taken in secret or executive session.

§ 47. Rules; quorum; voting. The common council shall determine the rules of its own proceedings and be the judge of the election and qualifications of its own members. A majority of the common council, including the mayor as a member thereof, shall be a quorum for the transaction of business, but a smaller number may adjourn from time to time. At all meetings of the common council each alderman shall have one vote. A majority of the aldermen present and voting at any meeting of the common council at which a quorum shall be present shall be sufficient to pass any resolution or ordinance, except that no ordinance authorizing or involving the expenditure of money or collection of money by a tax or assessment shall pass unless it receive the assent of a majority of all the aldermen in office, and except as otherwise provided in this act. The ayes and noes shall be called and recorded on all ordinances, resolutions and appointments.

§ 48. Compelling attendance of absent members. The attendance of absent members may be compelled by the common council, or by a meeting thereof at which less than a quorum is present, by the entry of a resolution and order in the minutes, directing the chief of police or any police officer of the city to arrest such absent member and take him before the common council at the meeting at which such member was absent, or at some subsequent meeting, to answer for his neglect.

§ 49. Legislative powers of common council. The general legislative powers of the city for all proper municipal purposes, except such as may be vested in other city boards or officers, shall be vested in the common council. It shall exercise, except as otherwise provided by law or by this act, all the corporate powers of the city and have the management and control of the finances and of all the property belonging to the city. It has the authority to enact, amend or repeal ordinances, not inconsistent with the laws of the state, for the government of the city and the management of its business, for the preservation of good order, peace and health, for the safety and welfare of its inhabitants and protection and security of their property. All the legislative acts of the common council shall be by ordinance. The powers of the common council include

the power to enact ordinances* for the purposes specified in section fifty of this act and for the following additional purposes:

1. **Relating to peace and good order generally.** To preserve the public peace and good order; to prevent or suppress vice, immorality, disorderly or gambling houses, and houses of ill fame, riotous, tumultuous assemblages, unnecessary crowds upon the streets or in door-ways and stair-ways adjacent thereto, or loitering about such places, and all disorderly, noisy, riotous or tumultuous conduct within the city, disturbing the peace and quiet of the city or any meeting or assembly therein.

2. **Care of property.** To provide for the care, custody and preservation of the property, books, records and papers belonging to the city, and to regulate the use and management thereof; to prevent and provide for the punishment of any unlawful interference with, or injury to, the water works or sewer systems, cemeteries and other city property.

3. **Use of streets generally.** To regulate the use of the streets and public places by pedestrians, vehicles, street cars, railways and locomotives; to regulate the speed of railway engines, cars and street cars through the city, and to prevent the obstruction of streets thereby; to regulate the length of time they may be allowed to stand upon and impede travel upon street crossings; to require and compel railroad companies to provide and keep flagmen, or watchmen at dangerous street crossings, and to erect and maintain proper hoisting or other gates thereat; to regulate the erection of poles and stringing of wires by telegraph, telephone and electric light companies in the streets and public places; and to compel such companies to place their wires in conduits; to provide for the cleaning of streets, public places, and the sidewalks and gutters therein, and for the removal of ice or snow therefrom, and from the roofs of buildings abutting thereon; to regulate or prevent the throwing of ashes, offal, dirt or garbage therein, and to regulate the carting, drawing away and deposit or disposal thereof; to regulate the erection of signs, sign-posts, awnings, awning-posts, hitching-posts and horse-blocks; to regulate or prevent the driving of wagons, barrows, carts, bicycles or other vehicles, and all animals, along any sidewalk; to regulate or prevent the leaving of horses standing in the public street or places loose and unattended; to regulate the speed of automobiles in the streets of the city; to regulate or prohibit coasting or skating in the streets and public places; to regulate the opening of street surfaces, and the laying of gas and water mains, and the erection of gas and other lamp-posts or other devices for lighting the streets; to prohibit or regulate the erection or construction of any stoop, step, platform, bay-window, cellar, area, stairs, descent or ascent into any building, or any erection or projections from any building or otherwise, in, over or upon any street or sidewalk,

* So in original.

or the removal of any house or building through the streets of the city; to require persons driving horses with sleighs or cutters to carry ringing bells, either upon the horses, sleighs or cutters; to regulate the width of tires on all wheeled vehicles, and generally to preserve the streets and public places of the city free from all obstructions and disturbances therein, or injury thereto, and from any interference with the free and peaceable use thereof by the public.

1. **Animals running at large; dogs.** To restrain, regulate and prevent cattle, sheep, horses, swine, dogs, geese and other animals and fowls running at large in said city, and to authorize the seizure and sale thereof for the penalty incurred by such running at large and the cost of their keeping; and to make regulations for taxing, muzzling and confining dogs, and for destroying such as are dangerous or may be found running at large contrary to any ordinance.

5. **Gambling and games of chance.** To suppress gambling and gaming tables and all instruments and devices employed in gaming; to regulate or restrain pool and billiard playing and the playing of games of chance by minors in public places.

6. **Vagrancy.** To restrain and punish street beggars, vagrants and mendicants.

7. **Noxious occupation.** To regulate and restrain all occupations and business noxious to public comfort.

8. **Licensing occupations.** To prohibit the pursuit or exercise, without a license granted by the mayor or under such regulations as the common council may prescribe, of any of the following trades or occupations, within the city:

a. Hawking and peddling in the streets and public places of the city.

b. The business of public hackmen, cabmen, expressmen, cartmen, pawnbrokers, auction sales, auction stores and junk dealers, and may require licensed conveyances to be numbered;

c. The business of runners for stages, railroads, hotels, taverns or other houses;

d. The business of theatrical or opera performances, concerts, circuses, acrobatic exhibitions, the exhibition of all curiosities, of all feats of legerdemain and necromancy, or other exhibitions of common showmen;

e. Billiard rooms, bowling alleys and other places of similar amusement:

f. The selling, keeping and storing of gun powder, gun cotton, blasting powder, dynamite, and all dangerous or explosive materials.

9. **Advertisements and hand bills.** To prohibit, regulate and restrain the exhibition, circulation and posting of advertisements and hand bills.

10. **Obnoxious and dangerous practices.** To prohibit, regulate or restrain the ringing and tolling of bells, blowing of horns and whistles, crying of goods and wares at auction, flying of kites, throwing of snow balls or ice, horse racing and immoderate driving, and the use of guns,

pistols, fire works, and detonating works of all descriptions; or any act in the public streets or elsewhere in the city having a tendency to frighten horses, to injure or annoy persons, or to injure or endanger property.

11. Slaughter houses. To prohibit the erection or continuance of and to regulate and prescribe the location of slaughter houses and of all places where cattle, sheep or swine shall be kept within the city, and to prohibit the slaughter or keeping thereof in any other places than those so directed.

12. Markets and marketing. To regulate the sale and place of sale of wood, hay, straw, grain, lumber and other marketable articles from wagons, sleighs and other vehicles and to fix the fees for weighing, selling or measuring the same; to regulate and designate public places or markets for the sale of fresh meats, fruit, poultry, butter, cheese, eggs, honey, vegetables, game birds, fish, and other articles usually disposed of from market wagons, and the fees for marketing privileges; to regulate the management, care and use of the public markets.

13. Prevention or extinguishment of fires. To regulate the manner of erecting brick, stone or other material for walls and buildings and the thickness thereof, to prohibit or require the removal of any such as may be deemed dangerous; to raze or demolish any building or erection which by reason of fire or any other cause has or may become dangerous to human life or health, or tend to extend conflagration; to regulate the construction of chimneys and the sweeping thereof; to prevent the setting up or require the removal of stoves, pipes, boilers and other articles deemed dangerous; to prohibit or regulate the deposit of ashes; to regulate the carrying on of manufactures which are liable to cause or promote fires; to regulate the use of lights in stables and other buildings in which combustible materials may be collected or deposited, and prescribe the use of lanterns or safety lamps in such stables or other buildings; to require, regulate or permit such other acts to be done as the common council may deem proper to prevent the occurrence or provide for the extinguishment of fires in the city.

14. Lock-ups, police stations and police headquarters. To establish, maintain and regulate a city lock-up or police station, for the detention and safe keeping of offenders, vagrants and other persons under arrest and to provide a keeper therefor, and for the proper care thereof; to establish police headquarters and other necessary rooms for the police department.

15. Public buildings and parks. To purchase ground and erect necessary buildings thereon, and to purchase grounds for a public park or parks, and to lay out and maintain the same, provided the necessary funds for such purposes shall have been voted at an annual or special election held as provided in this act, but not otherwise.

16. **Maps.** To make or cause to be made maps of the city and of the several wards thereof.

17. **Street names and lot numbers.** To designate and alter the names of the streets and the number of all lots and buildings and to compel the owners or occupants of buildings to affix thereto the proper numbers thereof in such manner as it may direct.

18. **Deposit of offensive substances.** To prevent the casting into any pond or stream within the city of any dead animal, offal, filth or foul, offensive or poisonous substances, or thing, or any earth, stones or rubbish; to prohibit all persons from bringing or depositing any unwholesome, putrid or decaying carcass, skins, hides, fish, meat or other substance within said city, and to require or authorize the removal or obstruction thereof.

19. **Sewers, drains and pipes.** To regulate the location and construction of private sewers, drains, water or gas pipes, and prevent injury to or obstruction of any sidewalk thereby.

20. **Injury to trees, fences and other property.** To prevent the injury or defacement of shade or ornamental trees and of fences, walks, posts and buildings in said city.

21. **Powers, duties and compensation of officers.** To prescribe and define the powers and duties of city officers which are not specified in this act, and are not inconsistent therewith; to fix and determine the compensation of city officers where they are not already fixed by law or by this act; to see that the city officers faithfully perform their several duties, and that proper means are taken to punish neglect of duty on the part of any of them.

22. **Division of city into districts.** To divide the city into road, fire or other districts as may be deemed necessary, and to fix the boundaries of the same.

23. **Public offices and supplies.** To provide rooms for the common council, the board of water commissioners, and the other city boards and officers, and for the several fire companies of the city, and the necessary fuel, lights, stationery and supplies for their offices.

24. **Ordinances generally.** To make all such ordinances as shall be necessary to carry into effect any general power or discharge any duty conferred or imposed by this act, although such ordinance may not be specially enumerated herein.

§ 50. **Improvement of streets and removal of nuisances at expense of owners.** The common council may:

1. Require the owners of lots to dig down, drain or fill up such lots whenever it may be necessary to prevent injury to the streets, side-walks or cross-walks;

2. Direct the sweeping and cleaning of the streets by persons owning or occupying the premises fronting thereon;

3. Order and regulate the plating,* removing, rearing, trimming and preserving of ornamental and shade trees in the streets of the city;

4. Regulate and provide for the erection of a railing or guard along the streets and side-walks in exposed and dangerous places;

5. Require any building, fence or other erection within the line of any street to be removed therefrom by the owner or occupant of the abutting property;

6. Compel the owner or occupant of any building or wall which may be in a dangerous or unsafe condition, on account of fire or otherwise, to render the same safe or to take it down and remove it;

7. Direct the owner or owners of any building used for public entertainments or other public purposes to provide the same with suitable and sufficient fire escapes and means of exit in case of fire, in the manner provided by the common council;

8. Authorize any city officer or any person designated by the common council to inspect any building used for public entertainments or other public uses to ascertain whether the same is in a safe condition, and if not to require the same to be made safe;

9. Compel the removal of any incumbrances, encoachments, obstruction or deposit of building materials in or upon any street, sidewalk, cross-walk or public ground;

10. Compel the owner or occupant of any premises in said city to remove all dirt, snow, and ice from the sidewalks and gutters adjoining such premises;

11. Regulate and superintend the laying of all gas and other pipes, except water pipes, in said city, fix the grade at which such pipes shall be laid, and compel the laying or relaying of the same in accordance with such established grade;

12. Require any individual, company or corporation, after laying, relaying or repairing such pipes in any street to put such street in good condition or repair, to remove, without unnecessary delay, all incumbrances and obstructions which such individual, corporation or company may have placed or caused to be placed in such street; to require such individual, corporation or company to keep proper signal lights burning at night at all holes, ditches and places which shall have been rendered dangerous to persons traveling in such street;

13. Prevent or regulate the construction and erection of any building, awning or other structure which shall project into or over any street or sidewalk, and the hanging or suspending of any goods, signs or other thing in or upon any street or sidewalk, and the placing of barrels, boxes or other thing in or upon any such street or sidewalk;

14. Designate such portions or said city as it may deem proper within

* So in original.

which buildings, in whole or in part, of wood or other combustible material shall not be erected or rebuilt, and remove or provide for the removal thereof if so erected or rebuilt;

15. Prevent or regulate the construction, erection or use in any manner dangerous in regard to fire, of any building, chimney or fire-place, heater, stove, stovepipe, repository of ashes or charcoal, boiler, furnace or other apparatus or thing, and compel the owner or occupant of any premises upon which shall be found anything so constructed, erected or used, to put the same in safe condition or remove the same;

16. Prevent and abate nuisances, and determine what are such, either upon view or upon the testimony of witnesses who may be examined under oath before it. For the purpose specified in this and the preceding subdivisions the common council or any city officer or person designated by it may enter into or upon any building or premises in the city. Whenever in this section the common council is authorized to require work to be performed by the owner or occupant of any premises, or by any other person, it shall cause a notice to be served upon such owner, occupant, or other person, specifying the thing to be done, and the time within which the work required shall be completed. The notice shall be served in such manner as the common council may prescribe. If such work is not performed by such owner or occupant or other person, within the time prescribed in such notice, the common council may cause the same to be done, at the expense of such owner, occupant or other person. The common council may determine that such expense shall be a lien upon the premises or lots mentioned or referred to in any of the above subdivisions. If it shall so determine it shall cause a notice of at least ten days to be served upon the owner or occupant of the premises affected, specifying the amount of such expenses to be assessed and stating that at a time and place specified therein the common council will hear all objections to the proposed assessment. At the time and place specified in such notice the common council shall hear objections and shall assess against the premises and lots mentioned the cost and expense incurred by it, and shall issue warrants against the owners or occupants thereof to collect such costs and expenses in the same manner as assessments and taxes are collected under the provisions of this act.

* § 51. **Mayor's action on ordinances.** Every ordinance and resolution of the common council except a resolution for the appointment of officers shall within twenty-four hours after its passage be certified by the clerk and presented to the mayor. If he approve it, he shall sign it and return it to the clerk, and it shall take effect. If he neglect to approve, sign and return it to the clerk within ten days after receiving it, and he does not

* As amended by Chap. 326, Laws of 1916.

disapprove it within that time as herein provided, then it shall take effect as if he had approved and signed it. If he disapprove it, he shall within the same time return it to the clerk with his objections in writing, and the clerk shall present the same with such objections to the common council at its next regular meeting; unless the common council shall reconsider such ordinance or resolution at such meeting or at a meeting held within thirty days thereafter, and pass it over the mayor's veto by the concurring vote of at least two-thirds of the total number of aldermen, which vote shall be taken by ayes and noes and entered on the minutes, together with the objections of the mayor, it shall not take effect; but if the requisite number of members shall vote therefor, then the ordinance or resolution shall take effect as if approved and signed by the mayor. When an ordinance appropriating money contains several items, the mayor may approve the provisions relating to one or more items, and disapprove the others. In such case those items which he shall approve, shall become effective, and those which he shall not approve, shall be reconsidered by the common council and shall only become effective if again passed by it as above provided; and the foregoing provision with reference to approval and disapproval and failure to return an ordinance, within ten days after the receipt of the same, shall be applicable to and govern such cases.

§ 52. Time of taking effect of resolutions and ordinances; publication. Any resolution or ordinance enacted by the common council may specify the time when it shall take effect. Every ordinance imposing a penalty or forfeiture, or punishable by fine or imprisonment shall be published at least once in each of the official newspapers of the city, and it shall take effect upon the completion of such publication unless a later date be specified therein. If no time for its taking effect be specified in any resolution or ordinance not required to be published, or if it specifies that it shall take effect immediately, it shall take effect on its approval by the mayor, if he approves; or, if he fails to return it to the clerk within ten days after the receipt thereof, it shall take effect on the eleventh day after such receipt thereof by the mayor; or, if he returns it with his disapproval and it be passed over his veto, it shall take effect at the time of its passage over his veto.

§ 53. Records of ordinances and resolutions; evidence. Every ordinance, rule, regulation, resolution and by-law of the common council, together with the certificate of the clerk of the time and manner of the publication thereof, if required by this act, shall be recorded by the clerk in a separate book or books to be provided by the city and kept for that purpose, which shall be indexed and always accessible to the public; and the said record or a copy thereof, certified under the corporate seal of the city by the clerk to be a true copy of such record, shall be presumptive evidence in all courts and places and in all actions and proceedings, of

the passage of such ordinance, rule, regulation, by-law or resolution, and of its having been duly published as by this act provided.

* § 54. **Violation of ordinances.** Any ordinance enacted by the common council may provide that any person violating such ordinance shall be guilty of a misdemeanor or of disorderly conduct, or shall be liable to pay to the city a sum therein named as a penalty not exceeding one hundred dollars, to be recovered in a civil action. If no provision be made in any ordinance as to the effect of a violation thereof every violation thereof shall be a misdemeanor. If a violation of any such ordinance be made a misdemeanor or disorderly conduct by or in pursuance of this act and be also made a misdemeanor or disorderly conduct by any other law, but one conviction shall be had on account of such conduct. If the violation of any ordinance constitutes either a misdemeanor or disorderly conduct, and also render a violator liable to a penalty in a civil action, the conviction of either disorderly conduct or a misdemeanor on account of such conduct shall be a bar to the recovery of the penalty in a civil action, and the recovery and payment of a judgment for the penalty shall be a bar to the prosecution for either the misdemeanor or the disorderly conduct on account of such violation. If the same conduct shall constitute a violation of an ordinance enacted by the common council of the city in pursuance of this act, and also a violation of an ordinance of the board of health of the city enacted in pursuance of law, such ordinance of the board of health shall so long as it remains in force and effect supersede and nullify such ordinance of the common council. The city may maintain an action to restrain by injunction a violation of any ordinance of the common council or board of health, notwithstanding that such ordinance may provide a penalty for such violation.

§ 55. **Licensing occupations.** If an ordinance of the city prohibits the carrying on of any occupation without a license therefor, the common council may fix the fee for such license or may authorize the mayor to fix the amount of such fee within certain minimum and maximum limits to be prescribed by it. Applications for such licenses must be made to the mayor and shall be granted or refused by him in his discretion. If the application be granted the mayor shall direct the city clerk to issue the license upon the production of a receipt from the city chamberlain for the amount specified by the mayor as the fee for such license, and the clerk shall thereupon issue such license accordingly. The chamberlain shall credit all license fees received by him to the contingent fund. The clerk shall keep in his office a record of each license, the person to whom issued, and the fee paid therefor.

§ 56. **Repairs of streets by street railways, et cetera. The common

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 326, Laws of 1916.

council may require any street railway, electric railway, railroad or other corporation to keep each street through which its road may pass, and the gutters, drains and culverts of said road in good condition and repair, to lay or relay such road, or any portion thereof, in accordance with the established grade of said street, and to remove without unnecessary delay all incumbrances and obstructions which such corporation shall have placed or caused to be placed upon such street; and if such corporation shall refuse or neglect to do any of the acts so required of it, after being notified to do the same, the common council may cause the same to be done at the expense of such corporation. Nothing in this act shall be construed to require any street or electric railway company to repair or keep in condition any street through which its road may pass, except the portion thereof covered by its road and a space two feet in width outside of and adjoining its track on either side. If it becomes necessary to remove snow or ice from any such street, the said street railroad company shall remove the snow or ice thrown out by it from its track, and said space, and also the snow and ice which shall be upon the space upon which said snow or ice is thrown or placed, which snow and ice shall be removed at such times and in such manner as the common council shall prescribe. Nothing herein contained shall be construed to deprive any railroad company of any of the rights or privileges now granted or which may be hereafter granted by the general railroad laws of the state.

* § 57. **Official newspapers.** The common council shall, at its first meeting in each official year, or as soon thereafter as practicable, fix and determine the legal fees per folio at which all notices, ordinances, by-laws, rules and regulations of the common council, board of education, board of water commissioners, board of health and officials of said city, and such other matters as the common council may direct to be published shall be published by the official newspapers of said city, and thereupon shall designate two newspapers published in or having a general circulation in said city, in which the same shall be published at the fees so prescribed. Said designation shall be made in the following manner: The members of the common council, representing respectively each of the two principal political parties into which the people of the city are divided, or a majority of the members of the common council representing respectively each of such political parties, shall designate, in writing, a paper fairly representing the political party to which they respectively belong, and such designation shall be signed by the members making it, and filed with the city clerk, and the two newspapers so designated shall be the official newspapers of said city. In case the members of the common council, representing each of the two principal political parties into which

* As amended by Chap. 326, Laws of 1916.

the people of the city are divided, or a majority of such members, cannot agree upon a newspaper, they shall make a report to that effect to the common council, and the common council shall thereupon, by resolution, designate a newspaper fairly representing such political party. In case either of the two principal political parties into which the people of the city are divided is without representation in the common council, the common council shall designate, by resolution, a newspaper fairly representing such political party. The newspapers so designated shall be the official newspapers of the city for the ensuing official year for the purposes aforesaid, and until the next annual designation, provided said newspapers shall agree to and with said common council to make the aforesaid publications at the fees prescribed by the common council. In case either or both of said newspapers shall refuse to make such publications at the rates so fixed then other designations shall be made as in this section provided. The affidavit of the publisher or proprietor of an official newspaper, or of the bookkeeper or foreman in charge of the publication of said newspaper, shall be presumptive evidence of the fact of such publication.

§ 58. **Old cemetery grounds.** The common council shall have the general charge, custody and control of the old cemetery grounds situate on Green street, in said city, and are hereby authorized, empowered and directed to erect, maintain and keep in proper repair the fences around the same, to build, maintain and keep in proper repair the sidewalks along the same, to straighten up and reset the grave-stones and keep the grounds generally in good shape and condition, and the expense thereof shall be paid from the contingent fund of the city.

ARTICLE IV.

CHAMBERLAIN; FINANCE; TAX BUDGET AND BONDS.

Section 60. General powers and duties of the chamberlain.

61. Official bond of chamberlain.
62. Deposit of city moneys.
63. Accounts of chamberlain.
64. Maintenance of city government; funds from which expenditures are payable.
65. Annual report and estimate by officers.
66. Annual estimate by mayor; determination of amount of annual levy.
67. Purposes of tax levy; designation of funds.
68. Johnstown Public Library.
69. Subdivisions of funds; transfers from one fund to another.

70. Payments from and into contingent fund.
71. Liquor tax moneys.
72. Temporary loans for current expenses.
73. Submission of propositions at city elections.
74. Issue of bonds.
75. Audit of claims by the common council and payment thereof.
76. Unauthorized contracts or expenditures.
77. Recovery from officers of amount of city debts contracted without authority.
78. All moneys to be paid chamberlain within ten days.

* § 60. **General powers and duties of the chamberlain.** The chamberlain shall be the fiscal officer of the city and shall:

1. Keep an office at such place in the city building as the common council shall provide and designate, which shall be kept open daily, except Sundays and legal holidays, from eight to twelve o'clock in the forenoon, and from one to five o'clock in the afternoon, and at such other hours as the common council may from time to time direct;

2. Keep separate accounts of the different funds of the city and of every warrant drawn upon such fund and he shall not knowingly pay or authorize to be paid out money from any fund which is not properly chargeable thereto;

3. At the first regular meeting of the common council in each month, held after the first day of each month, file with the city clerk a report showing in detail the total expenditures and receipts of city moneys during the next preceding calendar month, a summary statement of the receipts and expenditures of city moneys during that portion of the current fiscal year expiring with the last day of such preceding month, and the balance at the end of such month standing to the credit of each of the city funds. Such statement shall be in such form as shall be prescribed from time to time by the common council. He shall, at the first regular meeting of the board of water commissioners and of the board of education in each month, held after the first day of the month, file a similar report in reference to the water and school funds. An abstract of such reports shall be published once in each month in the official newspapers.

4. Receive personally all state and county, city, school and local taxes and assessments, and water rents which may be paid at his office, and retain there and not elsewhere, the possession of the warrants and assessment rolls which may from time to time be delivered to him by the supervisors or clerk of the city;

5. Enter daily in suitable books all sums of money received by him

* As amended by Chap. 660, Laws of 1910.

for taxes or otherwise, with the name of the person or corporation on whose account the same shall be paid, and, at the expiration of each month exhibit the same in his office to the mayor and finance committee of the common council and to the proper officers or committees of the board of water commissioners and board of education, for inspection;

6. Enter in a column in the assessment rolls in his possession opposite the names of the persons or corporations who shall pay their taxes or assessments, the fact of payment, the amount thereof, and the date when paid;

7. Keep a record of all persons, and their respective addresses, who may pay taxes for non-residents of said city, and the addresses of such non-residents, so far as he can ascertain the same;

8. Settle with the common council annually, and as much often-er as it may require, for all tax rolls and warrants issued to him by the board of supervisors of Fulton county, and for all moneys received or collected by him for school or other purposes, and produce the proper vouchers of the board of education and other boards and officers for all money paid upon the warrants, drafts or orders of said boards or officers;

9. Have the custody of all securities, obligations and other evidences of debt belonging to the city;

10. Perform such other duties incident to his office, as the common council may require.

*** § 61. Official bond of chamberlain.** Before entering upon the duties of his office, and on or before the fifteenth day of January of the year in which his official term shall commence, the city chamberlain shall execute and file an official bond for such term which shall be procured from some solvent surety company, in the penal sum of twenty-five thousand dollars, in accordance with the public officers law; for his omission so to do he shall be subject to the penalties and liabilities prescribed by the penal law, and the public officers law. The expense of procuring such bond shall be audited and paid out of the contingent fund. Such bond shall be approved by the common council and a certificate by the city clerk of such approval shall be endorsed thereon. The bond so endorsed shall be filed and recorded in the clerk's office of the county of Fulton in the same manner as the official bonds of town collectors, and such bond shall be a lien on all property of such chamberlain, until the conditions of such bond, together with all the costs and charges which may accrue upon the prosecution thereof, shall be fully satisfied. Upon the full satisfaction of the conditions of such bond the common council shall, by resolution, declare that such bond is satisfied, and a copy of such resolution, duly certified by the city clerk, may be filed and recorded in the office of said county clerk, and shall operate to discharge the same and the lien thereof from

* As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

record. A true copy of such bond and certificate shall be filed in the city clerk's office.

* § 62. **Deposit of city moneys.** The city chamberlain shall deposit all moneys received by him belonging to said city in some solvent bank or banks of said city to the credit of the city and to the credit of either the city, school or water fund, or state and county tax fund, as may be proper under the provisions of this act, and shall make such deposits daily, and within twenty-four hours after the close of each day's business; except that he may retain in his hands at all times not more than one hundred dollars for the convenient transaction of business. No bank shall act as such depository until it has executed, delivered and filed in the office of the city chamberlain a bond or undertaking to the city of Johnstown in the penal sum of ten thousand dollars, with two or more sureties to be approved by the mayor, conditioned for the safe keeping and prompt payment, upon legal demand therefor, of all such moneys held by or on deposit in such bank. The city chamberlain and his sureties shall be relieved from further responsibility for the moneys thus deposited by the city chamberlain in the banks which have given such security. Each bank so designated as a depository shall render an account of all the moneys of the city on deposit therein to the credit of any such funds, and of all warrants drawn thereupon, to the common council, the board of water commissioners, and the board of education, before the first regular meeting thereof, held after the first day of each month. Such bank shall return such warrants to the city chamberlain, who shall file the same in his office, and preserve the same in such manner as may be directed by the common council, the board of water commissioners, and the board of education, respectively.

§ 63. **Accounts of chamberlain.** The common council shall examine the accounts of the chamberlain from time to time, or cause them to be examined, and may prescribe the manner of paying out and accounting for moneys received by him belonging to the city in all cases not provided for by this act.

§ 64. **Maintenance of city government; funds from which expenditures are payable.** The common council shall:—

1. Provide for lighting the streets and public places of the city, the expenses of which shall be payable from the lighting fund;

2. Provide for the construction, maintenance, improvement, repair and cleaning of the streets, side-walks and cross-walks, culverts, bridges and gutters of the city, for the maintenance of the public grounds and parks, and for paving, macadamizing, and sprinkling the streets, the city's share of which expenditure shall be payable from the street fund;

3. Provide for the construction, maintenance, improvement, repair and

* As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

cleaning of the sewers of the city, the city's share of which expenditures shall be payable from the sewer fund;

4. Provide for the maintenance of the fire department, the expenses of which shall be payable from the fire fund;

5. Provide for the maintenance of the police department, the expenses of which shall be payable from the police fund;

6. Furnish the officers of the city with necessary office room, office furniture, books and stationery;

7. Keep in proper repair the public buildings of the city;

8. Require any officer of the city to furnish reports, information or estimates whenever deemed proper by it;

9. Employ such employes* as it may deem necessary to execute the work which it is authorized or required to cause to be executed, and fix their compensation.

All expenditures made or incurred by the common council not chargeable under this act to any other city fund, shall be payable from the contingent fund. All expense incurred for each local improvement which is chargeable to neighboring property owners and collectible by local assessment, if advanced by the city in anticipation of the collection of a local assessment, shall be payable from the contingent fund. Moneys raised by a special tax or by the sale of bonds for a specified purpose shall be set apart as a separate fund and shall not be included in any of the funds mentioned in this section, and payments therefrom shall only be made for the specific purpose for which they were raised.

§ 65. **Annual report and estimates by officers.** The chamberlain shall on or before the fifteenth day of January in each year deliver to the mayor a report of all expenditures from each of the funds of said city mentioned in section sixty-seven, and from the poor fund, during the next preceding fiscal year, showing separately and by items, the amount expended from each such fund and the balance standing to the credit of such fund at the close of the next preceding fiscal year. He shall also report an estimate of the amount which, in his judgment, will probably need to be expended from each of such funds during the current fiscal year; a statement in detail of all judgments against the city then remaining unpaid; an itemized statement of the principal and interest on all bonded or other indebtedness of the city that will fall due during the current fiscal year; a statement in detail of the amount of unpaid taxes and local assessments theretofore assessed and remaining unpaid, and the amount which, in his judgment, will probably be received by the city therefrom during the current fiscal year; all expenditures made or incurred by the city and chargeable to property owners or other persons and remaining unpaid, and the amount which, in his judgment, will probably be received from the city therefrom during the current fiscal

* So in original.

year; the amount which, in his judgment, will probably be received by the city as fees for licenses during the current fiscal year; the amount of fees received by him from the city clerk for certified copies of papers and services as clerk and registrar of the board of health and for other services during the preceding fiscal year, and the amount of such fees that will, in his judgment, probably be received by him for such fees during the current fiscal year; the amount of moneys received by him from the recorder for fines and penalties paid during the next preceding fiscal year, and an estimate of all other probable receipts and expenditures of the city for said funds during the current fiscal year. The recorder shall deliver to the mayor on or before the fifteenth day of January in each year, a report of all moneys received by him for fines and penalties during the next preceding fiscal year. The city clerk shall deliver to the mayor on or before the fifteenth day of January in each year a report of all moneys received by him for certified copies of papers, for fees for services rendered as clerk and registrar of the board of health and for all other fees received by him as city clerk during the next preceding fiscal year and an estimate of the amount of such fees that will probably, in his judgment, be received by the city clerk during the current fiscal year. The mayor may require further or more detailed financial reports from any of such officers.

§ 66. **Annual estimate by mayor; determination of amount of annual levy.** The mayor of the city shall, on or before the first day of February in each year, present to the common council his estimate of the amount by him deemed necessary to be raised by taxes in the annual city tax levy for the current fiscal year for each of the city funds mentioned in section 67, and for principal and interest on all bonds issued by said city, or for which it may become liable, falling due within the current fiscal year; the total amount deemed by him necessary to be raised by taxes in such annual city tax levy, and the amount which, in his judgment, will probably be received by the city during the current fiscal year from all other sources than the annual city tax levy, specifying the amount from each source by items. He shall at or before the time of presenting such estimate file with the city clerk the reports delivered to him, in pursuance of the preceding section. The common council shall, on or before the fifteenth day of February in each year, consider such estimate, and may revise such estimate for all funds by increasing or reducing the amount of the mayor's estimate therefor, and shall finally determine the amount to be included in the annual city tax levy for the current fiscal year for each such fund, and shall finally determine the total amount to be raised by taxes in the annual city tax levy for the current fiscal year, which shall not exceed the amount limited therefor by this act. Such determination shall be subject to the veto of the mayor, and subject to be passed over his veto, as in this act provided.

* § 67. **Purposes of tax levy; designation of funds.** The common council of the city may raise by tax upon the real and personal property and public franchises assessable in the city, in each year, certain amounts which shall be estimated and designated each year for the following purposes:

a. For the payment of the expenses of the police department, including the salary of the recorder, and the salaries of the officers of said department, to be designated the police fund.

b. For paving, repairing and keeping in order the highways, streets, crosswalks, gutters, lanes, public places and grounds of said city, for the services of the superintendent of streets and his assistants, the erection and maintenance of bridges and culverts, and other expenses relating to the streets and highways, to be designated the street fund.

c. A sum necessary for defraying the expenses of supplying and keeping in good condition and repair the engine houses, hose carts, hook and ladder carts, fire alarm telegraph and other apparatus deemed necessary for the extinguishment of fires, and for paying the salaries and wages of officers and employees of the fire department, to be designated the fire fund.

d. A sum necessary for defraying the expenses of constructing, repairing and keeping in order the sewers, to be designated the sewer fund.

e. A sum necessary for the lighting of the streets and public buildings of said city, and the cost and expenses of maintaining and keeping in repair the lamps and lamp-posts and all necessary fixtures connected therewith, to be designated the lighting fund.

f. A sum necessary for defraying the general and contingent expenses of the city, for the payment of the salaries of officers not otherwise provided for, and all other expenses not otherwise provided for, to be designated the contingent fund.

The aggregate for the annual tax levy for all purposes in this section above specified shall not exceed the rate of one per centum of the assessed valuation of the real and personal property and public franchises liable to taxation in said city, as the same shall appear from the assessment-roll of said city for the current year. In addition to the amounts which shall be included in the annual tax levy for the foregoing purposes, there shall also be included therein such additional sums as are necessary to pay the portion of the expenses charged to the city at large for improvements made or under process of construction pursuant to section one hundred and twenty-three of this act, including interest thereon, and for the payment of any installment of such expenses, with interest thereon, which may be or has been deferred by the common council as provided by law; such additional moneys, so raised, shall be credited to

* As amended by Chap. 326, Laws of 1916.

the street fund and shall be used for the payment of such improvements. There shall also be included therein such amount as shall be necessary to meet the principal and interest on bonded and other indebtedness of the city falling due during the fiscal year for which the tax is levied, and to meet all indebtedness remaining unpaid on all judgments against the city, and such further sums as shall have been voted at an annual city election, or at a special city election called for the purpose.

* § 68. **Johnstown public library.** The Johnstown public library, incorporated under the university law for the establishment and maintenance of a free public library in the city is hereby continued. Andrew Carnegie having donated to the city twenty-five thousand dollars for a free public library building on condition that two thousand five hundred dollars be annually raised by tax for the maintenance and extension of such library, the sum of two thousand five hundred dollars shall be annually raised by tax and appropriated for the maintenance and extension of the Johnstown public library. The chamberlain shall, on or before the first day of July in each year, pay to the treasurer of the Johnstown public library the said sum of two thousand five hundred dollars, together with such additional sums as may be raised as is hereinafter provided, which shall be expended by the trustees of such library for its maintenance and extension. The common council, including the mayor, may, by a two-thirds vote, increase the sum above provided for, in any year, but cannot decrease the same.

§ 69. **Subdivision of funds; transfers from one fund to another. Except as otherwise provided in this act, the funds of the city shall be subdivided into the several funds as designated in section sixty-seven of this act, and in amounts or proportions as determined upon therefor by the common council pursuant to section sixty-six of this act. No transfer of money from one city fund to another shall be authorized or made except that the common council may, at the close of the fiscal year, by resolution direct the transfer of surplus moneys in the poor fund to any other fund, and the city chamberlain shall restate his accounts of the funds so changed accordingly. The expenditures from any fund shall be limited to the amount standing to the credit of that fund upon the books of the city chamberlain unless a different and greater expenditure is authorized at a special city election.

§ 70. **Payments from and into contingent fund.** Except as herein otherwise provided, all moneys belonging to said city shall be paid to the chamberlain thereof and deposited to the credit of the contingent fund; and all payments of money made by said city, or by any board or officer thereof, when authorized by or in pursuance of law, and the

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 671, Laws of 1907.

fund from which such payment is to be made is not otherwise designated, shall be made from the contingent fund.

§ 71. **Liquor tax moneys.** The moneys received by the city of Johnstown from the issuance of liquor tax certificates shall be paid to the chamberlain to the credit of the poor fund of the city.

* § 72. **Temporary loans for current expenses.** Whenever the common council shall have determined the amount of the annual city tax levy for the several city funds, or whenever a local improvement shall have been authorized, payable by local assessment, it shall have authority to authorize the chamberlain to borrow upon the faith and credit of the city, so much of the amount so included in such annual city tax levy, or so much of the estimated cost of such local improvement, as estimated by the city engineer, as may be actually necessary to meet the current expenses of the city, or to meet the cost of such local improvement, and the amount so borrowed shall be repaid from the moneys raised by said annual tax levy or said local improvement assessments.

§ 73. **Submission of proposition at city elections. The common council may submit to the electors of the city, at an annual or special election, a proposition for the purchase by the city of real property, the construction by the city of a new building or buildings, or for any other special purpose. Such proposition shall specify the amount to be raised, the purpose to which such amount is to be applied and whether such amount shall be raised by tax in one year, or by the issue of bonds, payable at such time or times as shall be specified therein. Notice that such proposition will be submitted at such election shall be published in the official newspapers of the city at least once a week for three successive weeks prior to the holding of such election, which notice shall specify the form of ballot for and against such proposition to be used at such election. If a majority of the electors voting on such proposition, at such city election, shall vote in favor of such proposition, the amount so voted shall be raised by tax in one year, in addition to the amount otherwise authorized by law to be raised by tax in such year; or by the issue of bonds in accordance with such proposition. If such proposition as adopted requires the issue of bonds, the common council shall authorize the mayor to execute bonds of the city in such amounts, and payable at such times as such proposition shall require. A special city election held pursuant to this section, may, in the direction of the common council, be held at one or more polling places to be designated by said council, and said council shall designate the inspectors and the number of the same for each polling place, for holding such special city election, from the inspectors residing in the ward in which the polling

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 660, Laws of 1910.

place is located. The polls of such an election shall be opened at ten o'clock ante meridian and closed at four o'clock post meridian. The inspectors at the polling place or polling places designated by the common council shall canvass the votes received immediately after the close of the polls, and shall thereupon make a certificate signed by them, or by two of them, stating the whole number of votes cast at the polling place presided over by them, the number of votes for the proposition and the number of votes against the same, and shall forthwith deliver such certificate to the city clerk. The certificate shall be delivered by the city clerk to the common council at its next meeting, and the council shall cause the result of the election thus certified to be entered in its minutes.

§ 74. Issue of bonds. Unless otherwise provided in this act bonds or other obligations of the city shall be made payable within twenty years after their respective issues and may be made payable in equal annual installments as near as may be. Interest on such bonds shall be payable semi-annually at a rate not exceeding five per centum per annum. They shall be sold on sealed proposals or at public auction upon notice published in the official newspapers for at least three weeks prior to the time of such sale or the opening of such proposals. They shall be awarded to the highest bidders at not less than par and accrued interest. The bonds shall be consecutively numbered from one to the highest number issued, and the chamberlain shall keep a record of the number of each bond or obligation, its date, amount, rate of interest, when and where payable, and the purchaser thereof, or the person to whom issued.

*** § 75. Audit of claims by the common council and payment thereof.** All claims and accounts against said city of whatever nature, except such as may lawfully be made, incurred and paid by the board of water commissioners, or the board of education of said city, shall be presented to the common council for audit, and the same shall be referred to a standing committee thereof to be called the committee on auditing accounts. It shall be the duty of said committee to inquire into such claims or accounts, and they may take proofs on oath in relation thereto, and shall report thereon to the common council, with their reasons, and the common council shall then hear, examine and determine the same. The common council may prescribe the form of affidavit to be sworn to and annexed to bills against the city. The accounts and claims so audited shall be paid by the chamberlain on the warrant of the mayor, countersigned by the city clerk, specifying the amount so audited and fund from which it is payable. The clerk shall keep a record of every such warrant.

§ 76. Unauthorized contracts or expenditures. No city officers or

* As amended by Chap. 326, Laws of 1916.

other person shall make any purchase in behalf or on the credit of the city, or contract any debts or liabilities against the city unless authorized so to do by law. No account, claim or demand of any kind against the city shall be audited, allowed or paid unless so authorized. If a city officer shall vote for any appropriation or for the payment or expenditure of moneys not authorized by law such officer shall be liable to a penalty of one hundred dollars to be recovered by the city in a civil action, and shall be guilty of a misdemeanor. If the common council or any city board shall authorize an expenditure of money by the city for any purpose exceeding the amount authorized by law to be expended for such purpose, the members of such council or board voting for such expenditure shall be personally liable for the amount thereof, but the city of Johnstown shall not be liable therefor, and neither the common council nor any city board or city officer shall pay any debt or expenditure so contracted or made.

§ 77. Recovery from officers of amount of city debts contracted without authority. It shall be the duty of the common council, within twenty days after the commencement of each official year, to ascertain the amount of debts contracted by the common council for the next preceding fiscal year or by any other city board or officers. If such indebtedness shall exceed the amount authorized by law the common council shall make a statement of such facts, showing the amount of such debts so contracted and the amount thereof unauthorized by law, which statement shall be signed by the mayor or presiding officer of the common council and the aldermen present at such meeting and shall be entered in the minutes of the common council; and the common council shall thereupon cause an action to be brought in the name of the city to recover such unauthorized amount thereof against the several aldermen or officer who voted for the expenditure, constituting such indebtedness or any portion thereof, and against the mayor, who may have approved a resolution therefor, and such money, when collected, shall be paid into the city treasury for the benefit of those entitled thereto. If any city officer or board of city officers shall have violated any of the provisions of section seventy-six of this act and the common council fail to prosecute or commence an action as required by said section and by this section, any resident taxpayer of the city of Johnstown may bring any such violation by the common council or any city officer to the notice of the district attorney of the county of Fulton, by serving upon him personally, in writing, a copy of such sections, together with proofs of the violation thereof and of the failure of the common council to act as provided in this section. It shall then be the duty of the district attorney, at the first session or meeting of the grand jury, held thereafter, to lay before such grand jury the information and evidence furnished him as aforesaid, together with such other facts and evidence as may be fur-

nished him or may be procured by him, for such action as the grand jury may deem just and proper in the premises. Any failure on the part of the said district attorney to perform the duty imposed upon him by this section shall be a cause for his removal from office.

* § 78. **All moneys to be paid chamberlain within five days.** All officers or other persons who shall receive any money for or belonging to said city, by or under the provisions of this act, or otherwise, shall, within five days after its receipt, pay the same over to the chamberlain of the city and take his receipt therefor, except as otherwise provided in this act.

ARTICLE V.

ASSESSMENT AND COLLECTION OF TAXES.

Section 90. The assessor.

91. General provisions relating to assessments.
92. Assessment for State and county tax.
93. Supervisors to apportion state and county charges, floating and bonded indebtedness of the town of Johnstown.
94. Warrant for the collection of county and State tax.
95. Payment and discharge of bonded indebtedness of the town of Johnstown.
96. Tax notices; payment of State and county taxes; fees.
97. Collection of State and county tax.
98. Assessment for city taxes.
99. Levying of city taxes.
100. Warrant for collection of city taxes.
101. City tax notices; payment of city taxes; fees.
102. Collection of city taxes.
103. Unpaid taxes; revision of assessment rolls.
104. Completion of revised assessment-roll by assessor.
105. Certified copy of revised roll to be filed; limitation of liens.
106. Proceedings by chamberlain in the collection of unpaid taxes.
107. Title of purchasers at sale.
108. Redemption from tax sale.
109. Certificate and deed to purchaser.
110. Reimbursement to purchaser on failure of title.

* As amended by Chap. 326, Laws of 1916.

- 111. Actions for collection of unpaid tax.
- 112. Application of this article to local assessments.
- 113. Correction of manifest errors.
- 114. Reassessment.
- 115. Surplus on sales.

Section 90. **The assessor.** The assessor shall perform all the duties required of him by this act in relation to the assessment of property in said city, as well for the purpose of imposing taxes levied by the board of supervisors of Fulton county as those levied by the common council of said city, and to that end he shall perform all the duties and possess all the powers and authority of town assessors, except as modified by this act.

§ 91. **General provisions relating to assessments.** In the assessment of any lands in said city for any purpose, it shall be sufficient to state the name of one of the owners or occupants of said land, and also the street and number of any building thereon; but, if the land be vacant or the buildings thereon not numbered, then the name of the street on which it fronts shall be given. In case no inhabited building is on the land, the owner may be designated as unknown. No error in the name of the owner or occupant shall invalidate the assessment. During the time the assessor reviews any tax or assessment, he shall have power to add to or insert in such assessment-roll any property liable to assessment, and the valuation thereof, which may have been omitted from such rolls, upon giving personal notice to the owner of such property, or his agent, at least two days prior to adding the same.

§ 92. **Assessment for State and county tax.** The assessor of said city shall, for the purpose of and in relation to the assessment for the levy and collection of State and county taxes within said city, possess all the powers and authority which assessors of a town have in relation to the assessment for levy and collection of State and county taxes within a town, and the provisions of the Tax Law relating to assessments in towns shall apply to such assessment except as otherwise provided in this act. He shall prepare the assessment-roll for said city and a duplicate thereof (both of which shall be deemed originals) and complete the same on or before the first day of August in each year, and thereupon, instead of proceeding in pursuance of the general laws, he shall proceed as follows: He shall, forthwith, upon the completion of such assessment-rolls, give notice that he has completed the same and that said rolls have been left at the office of the city clerk, where they may be seen and examined by any person interested, until the third Tuesday in August, and that on that date, and for two consecutive days thereafter, the said assessor will be at the office of the city clerk from nine to twelve in the

forenoon, and from two to four and seven to nine o'clock in the afternoon, to review the assessments. Such notice shall be posted in at least three conspicuous places in each ward, and shall also be published at least once in each of the official newspapers of the city, at least ten days before such third Tuesday of August. The said assessor shall attend, at the place and during the time specified in such notice, and review said assessment in the same manner as assessors of towns, and during such time the clerk's office must be kept open, and it shall be the duty of the city clerk to personally attend thereat. Said assessor shall, at the expiration of two days after the third Tuesday in August, cease to correct and review said rolls, and on or before the first day of September thereafter, he shall deliver the same completed and subscribed and verified according to law, to the city clerk, and the city clerk shall forthwith file the same in his office. The said clerk shall deliver the duplicate original assessment-rolls, on or before the first day of October thereafter, to one of the supervisors of said city, who shall deliver the same to the board of supervisors of the county of Fulton, as and for the assessment-rolls of said city. Said board of supervisors shall have the power and authority to examine and correct such assessment-rolls, and to equalize the values therein expressed, as it has or may have, by law, with respect to the assessment-rolls of towns in said county.

§ 93. **Supervisors to apportion State and county charges, floating and bonded indebtedness of the town of Johnstown.** The board of supervisors of Fulton county, at each annual session so long as the proportional share of the bonded indebtedness of the original town of Johnstown, incurred by it in aid of the Fonda, Johnstown and Gloversville railroad, chargeable to the city of Gloversville, remains uncollected and unpaid by said city of Gloversville to the railroad commissioners of the town of Johnstown, shall fix and determine the proportional share or amount of such bonded indebtedness, due and payable for the current year for principal and interest, to be paid respectively by the city of Gloversville, by the city of Johnstown, and by the town of Johnstown, not included within the boundaries of either of said cities in the following manner: The amount of money to be paid by each of said cities and by said town, respectively, shall bear such proportion to the whole amount to be paid for the current year as the assessed valuation of the property of each of said cities and of said town upon their respective assessment-rolls for that year as equalized by said board, bears to the aggregate assessed valuation of the property of said cities and said towns, as equalized by said board. The said board of supervisors at each annual session, so long as the proportional share or amount of the bonded railroad indebtedness of the town of Johnstown refunded by said town after the incorporation of the city of Gloversville, chargeable to the city of Johnstown, remains uncollected and unpaid by said city to the rail-

road commissioner of said town, fix and determine the proportional share or amount of such indebtedness, due and payable for the current year for principal and interest, to be paid respectively by the city of Johnstown and by the town of Johnstown. Said board of supervisors shall fix and determine the proportional shares or amounts of such State and county charges, floating indebtedness, and refunded railroad indebtedness which shall be paid by the city of Johnstown and said town, respectively, in the following manner: The amount of money to be paid by said city and said town, respectively, shall bear such proportion to the whole amount to be paid for the current year, as the assessed valuation of the property of each, upon their respective assessment-rolls for that year, as equalized by said board, bears to the aggregate assessed valuation of the property of said city and town, as equalized by said board. The city of Johnstown shall, for all purposes relating to the assessment and collection of taxes, be and constitute a separate and distinct township in said county of Fulton, except that the bonded indebtedness of said original town of Johnstown, and of the town of Johnstown as constituted after the incorporation of the city of Gloversville, shall be adjusted and provided for, from year to year, as herein set forth. Said board of supervisors shall levy upon the city of Johnstown such proportional share or amount of such State and county taxes in the manner authorized by the laws of this State with respect to towns; and from year to year the proper proportion of said bonded indebtedness of said town; and extend the same upon the assessment-rolls of said city in the manner in which it is by law directed to levy like taxes upon the several towns of said county. Provided, however, that whenever the said board of supervisors shall have fixed and determined the proportional share or amount of said bonded railroad indebtedness, or of said refunded bonded railroad indebtedness, which shall be paid by the city of Johnstown, and shall not have extended the same upon the assessment-rolls of said city, the common council thereof may refund the same, or any part thereof, as provided by section seven of the General Municipal Law.

§ 94. Warrant for the collection of county and state tax. The board of supervisors of the county of Fulton shall annex to one of the corrected assessment-rolls of the city a warrant under the hands and seals of the said supervisors, or a majority of them, directed to the chamberlain of the city of Johnstown, commanding the said chamberlain to receive and collect, according to law, from the several persons named in the assessment-rolls the several sums mentioned in the last column opposite their respective names, and pay over the same in the manner directed in said warrant. Such warrant shall contain the same directions, as near as may be under the provisions of this act, as to the disposition of the money so received and collected by said chamberlain as similar warrants directed to collectors of towns and issued by said board of super-

visors. Such corrected assessment-rolls and warrant shall be delivered to one of the supervisors of the city of Johnstown on or before the fifteenth day of December in each year, and said supervisor shall immediately return the same to the city clerk. The assessment-roll to which the warrant is attached shall be immediately delivered by the city clerk to the chamberlain. To the original assessment-roll remaining in the city clerk's office shall be attached a copy of said warrant and receipt signed by the chamberlain acknowledging the delivery to him of the other original roll and warrant.

§ 95. **Payment and discharge of bonded indebtedness of the town of Johnstown.** All money collected by said chamberlain by virtue of said assessment-roll and warrant to apply on the bonded indebtedness of the town of Johnstown and the interest thereon shall be paid over by him to the supervisor of the town of Johnstown, as the railroad commissioner of said town, and the receipt of said supervisor taken therefor; and when any such annual sum so fixed and determined by the board of supervisors shall have been so collected and paid to said supervisor as such commissioner, all liability and responsibility of the city of Johnstown for such part of such bonded indebtedness shall be discharged, and said city and the property therein relieved from all responsibility therefor and the town of Johnstown obligated therefor.

§ 96. **Tax notices; payment of State and county taxes; fees.** Upon receiving the said assessment-roll the chamberlain of said city shall give notice, in the official newspapers of the city, of the receipt by him of such assessment-roll and warrant, and that all persons named therein are required to pay their taxes at his office on or before the first day of February next ensuing. From and after the date of said notice and up to the first day of February next ensuing any person or corporation may pay his, her or their taxes therein assessed without any fee in addition thereto. If any such tax shall remain unpaid on the first day of February after the delivery of the assessment-roll and warrant, the chamberlain shall thereupon cause a written or printed notice to be given to every person residing in the city from whom such tax may be due, specifying the amount of the tax and the percentage thereon, and requiring the same to be paid on or before the fifteenth day of February of the same year at his office. Such notice shall be served on the persons assessed by depositing the same in the Johnstown post-office, inclosed in envelopes and directed to the persons assessed, at Johnstown, New York, and paying the postage thereon; but if any of the persons assessed shall be known by the chamberlain to reside in any other place, their notice shall be directed to them at such other place. It shall not be necessary to make any other demand of payment of said tax. After said first day of February, and up to and including the fifteenth day of February, two per centum fees shall be added to the tax and collected by

the chamberlain. After the fifteenth day of February the fees of the chamberlain for collecting said taxes shall be five per centum.

§ 97. **Collection of State and county tax.** After the fifteenth day of February the chamberlain shall proceed, without delay, to issue his warrant, under his hand and seal of the city, to any policeman of the city or to as many of them as he may deem necessary, who may be approved by the common council, commanding such officer or officers to levy the tax and fees by distress and sale of the goods and chattels of the person or corporation upon whose real or personal property the tax was apportioned according to the said assessment and tax-roll, or of any goods or chattels in his, her or their possession wheresoever the same may be found in the city of Johnstown or county of Fulton, and to pay the same to the said chamberlain, and return such warrant on or before the first day of May in each year; and no claim of property made to such goods and chattels shall be available to prevent the sale thereof, except in such cases as are provided for by the general statutes of this State. Said policeman shall immediately upon the collection of any tax as aforesaid pay to the chamberlain such tax and fees; and if the property be sold for more than the amount of tax, fees and costs of such levy, distress and sale, which costs shall be the same as those allowed by law to constables on execution, the surplus shall be returned to the person or corporation entitled thereto.

* § 98. **Assessment for city taxes.** The city assessor shall in the months of February and March of each year proceed to make up the annual assessment-rolls for city taxes, which he shall complete and file with the city clerk on or before the fifteenth day of April following. He shall proceed in the same manner in so doing as provided for the assessment-rolls for the state and county taxes, as near as may be, except that he shall hear objections to said rolls, beginning on the first Tuesday of April in each year and continue to hear the same for two days thereafter, and that he shall give notice of the hearing of such objections for two weeks preceding said first Tuesday of April, in the same way and manner as provided for said assessment-rolls for said state and county taxes, and except that it shall be the duty of the assessor to assess at full value, the same as other city property is required to be assessed, and to designate on such assessment-roll as "farm lands" all agricultural lands occupied and used for strictly farming purposes, situated in whole or in part within said city, and keep the same in a separate column of said assessment-roll, except in the following cases: whenever agricultural lands are laid out as city lots, and streets have been opened through such lands; whenever agricultural lands are located within two hundred feet of a city water main measuring over a public street or highway, and whenever

* As amended by Chap. 660, Laws of 1910, and Chap. 326, Laws of 1916.

agricultural lands have been sold for city lots, in which cases such lands shall be assessed as city lots. Said assessor shall also note upon said assessment-rolls such agricultural lands, so assessed as "farm lands," as are benefited by the location of electric or other lights in the streets and highways passing through or along them, by writing in the column containing the assessment the words "assessed for lighting purposes."

§ 99. **Levying of city taxes.** Immediately after the filing of said corrected assessment-rolls with the city clerk, as in the last section provided, the common council shall cause the amount authorized to be raised for all city purposes, except the care and maintenance of the streets and highways and for electric or other lights and lighting, as finally determined, to be rated and assessed upon the property of each person, company, corporation or association appearing on said assessment-rolls, except agricultural lands occupied and used for strictly farming purposes and assessed as "farm lands," to be set opposite the name of such person, company, corporation or association, respectively, in the last column of said tax-rolls, to be headed "city taxes," in proportion to the valuation therein stated. It shall also cause the amount authorized to be raised for the care and maintenance of the streets and highways in said city as finally determined, to be rated and assessed upon the property of each person, company, corporation or association appearing on said assessment-rolls, and the same to be set down therein in a separate column headed "highway taxes," opposite the name of such person, company, corporation or association, respectively. It shall also cause the amount authorized to be raised for electric or other lights and lighting of the streets and highways in said city as finally determined, to be rated and assessed upon the property of each person, company, corporation or association appearing on said assessment-rolls, except agricultural lands occupied and used for strictly farming purposes and assessed as "farm land" and not "assessed for lighting purposes," and the same to be set down therein in a separate column headed, "lighting taxes," opposite the name of such person, company, corporation or association, respectively. After said assessment-rolls have been so completed and the taxes thereon extended, the same shall be adopted by a resolution of the common council and filed with the city clerk.

§ 100. **Warrant for collection of city taxes.** The city clerk shall thereupon, and on or before the first day of May following, deliver one of said original assessment-rolls to the chamberlain, with a warrant thereto annexed, under the corporate seal of the city, and signed by the mayor and the clerk thereof, commanding him to receive and collect from the several persons, companies, corporations and associations named in such tax-roll the several sums mentioned in the last column of such roll, and also the several sums set down therein for highway tax and lighting tax, opposite to their respective names, in the same manner as in

this act provided. To the other assessment-roll the clerk shall attach a copy of the warrant and a receipt, signed by the chamberlain, acknowledging the delivery to him of the other original assessment-roll and warrant. Said warrant shall also state the amount of money which is to be raised by said tax for each of the purposes as hereinbefore stated, and the chamberlain shall apportion the tax collected by him among said several funds as collected, according to the respective amounts thereof.

* § 101. **City tax notices; payment of city taxes; fees.** Upon receiving said roll the chamberlain shall give notice in the official newspapers of the city of the receipt by him of such assessment-roll and warrant, and that all persons named therein are required to pay their taxes at his office on or before the first day of June next ensuing; for one month after said May first every person, company, corporation or association may pay his, her or their taxes to said chamberlain without any additional charge; for one month next succeeding, two per centum fees will be collected, and after that five per centum fees will be collected. If any tax shall remain uncollected on the first day of August, the chamberlain shall give notice to the person or persons against whom such tax stands charged. The notices shall bear even date as of the first day of August and shall require said person or persons or corporations to pay such unpaid tax to said chamberlain at his office within one month thereafter, with five per centum fees thereon. Said notices shall be served in the same manner and form as notices of county and state taxes, and the provisions with reference to such notices and the service thereof, shall apply to the notices herein specified as far as the same may be applicable.

§ 102. **Collection of city taxes.** On and after the first day of September it shall be the duty of the chamberlain to proceed with the collection of the city taxes then remaining unpaid, in the same manner as provided for the collection of county and State taxes, except as herein otherwise provided. The warrants for the collection of city taxes shall be dated September first, and be returnable to the chamberlain on or before November first in the same year.

§ 103. **Unpaid taxes; revision of assessment-rolls.** In case any of the taxes mentioned in this article shall remain unpaid after the foregoing proceedings shall have been taken, the list of all the unpaid taxes on all the rolls, both city and county, including the rolls for local assessments made during the year next preceding, shall be delivered by the chamberlain to the assessor of the city on or before the fifteenth day of December, and he shall immediately review such unpaid assessments and correct all errors of every description which have been made either in the original assessments or subsequent proceedings, and shall make correct and full descriptions of the several parcels of land. He shall

* As amended by Chap. 326, Laws of 1916.

also have power to insert in such revised roll any real estate in the city which may have been omitted in the original rolls, upon giving at least two day's notice thereof to the owner or agent of such property. He may add to said roll, with proper corrections, any unpaid assessments for local improvements assessed during the then next preceding year.

*** § 104. Completion of revised assessment-roll by assessor.** He shall complete such revision within ten days, and shall subscribe the same, and shall give public notice that he will attend at the city clerk's office at the end of ten days, at a time to be designated by him, to hear objections and to correct any errors which may have been made. Such notice shall be given by publishing the same at least once, at least one week prior thereto in the official newspapers of the city. He shall, within ten days thereafter, complete such correction and subscribe the same and deliver the corrected rolls to the chamberlain. The chamberlain shall add to said rolls the amount of taxes assessed upon the several persons or parcels of land, designating the county and state tax separately from the others, together with all accrued fees thereon, with twenty cents for filing and one dollar for reassessing each parcel.

§ 105. Certified copy of revised roll to be filed; limitation of liens. A certified copy of such revised assessment-roll shall be filed in the office of the clerk of Fulton county. All taxes and assessments on real property shall cease to be liens thereon, as against subsequent purchasers, mortgagees and the holders of other incumbrances unless such certified copy shall be so filed within one year after the making of the original assessment-roll. Such liens shall cease as against such persons five years after the date of filing such certified copy.

****§ 106. Proceedings by chamberlain in the collection of unpaid taxes.** The chamberlain shall retain in his office a copy of such list and shall thereupon proceed to collect all such unpaid taxes as follows: Whenever any such tax charged on real estate in said city and the interest thereon at the rate of seven per centum per annum, to be computed from the first day of December, with said fees and expenses, shall remain unpaid for six months from said first day of December, the chamberlain shall proceed to advertise and sell such real estate in the manner hereinafter provided for the payment of such tax, fees, interest and expenses, and the expense of advertising and selling the same shall be charged on the land sold, and shall be added to and made a part of such tax. The said chamberlain shall cause to be published, at least once in each week, for three weeks, in the official newspapers of the city, a list or statement of the real estate charged with the payment of such taxes, interest and fees so liable to be sold, and also a notice that the said real estate will, on a day at the ex:

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 660, Laws of 1910.

piration of said three weeks, to be specified in such notice, and the succeeding days, be sold at public auction at a place to be designated in said notice in the city of Johnstown, to pay the taxes, interest, fees and expenses thereon which may remain unpaid at the time of such sale. The expense of publishing such list and notices shall not exceed the sum of one dollar to each newspaper for each parcel of land so advertised. On the day named in said notice, the chamberlain shall commence the sale of said real estate, and shall continue such sale from day to day until the whole thereof shall be sold. It shall be the duty of the chamberlain to bid in for the city all parcels of real estate at such sale which shall not be purchased by any other person at a rate sufficient to pay the taxes for which the land is to be sold, with all the accrued interest, additions, fees and expenses; and the city shall thereupon have all the rights of any other purchaser at a tax sale.

§ 107. **Title of purchasers at sale.** The purchasers at such sale shall pay the amount of their respective bids to the said chamberlain within forty-eight hours after the sale, and thereupon the said chamberlain shall execute to each purchaser a certificate, in writing, which shall contain a description of the real estate purchased, the amount paid therefor, the date of the sale, and that the same was sold for unpaid taxes. Such purchaser and his legal representatives or assigns may, immediately upon receiving such certificate, by virtue thereof, and of this act, lawfully possess, hold and enjoy, for his or their proper use and benefit, and the use and benefit of his or their heirs and assigns forever, the real estate described in said certificate, unless the same shall be redeemed as hereinafter provided. Such purchaser and his heirs and assigns, may, at any time after the expiration of the time limited for the redemption of such premises, and after a failure to redeem as hereinafter provided, cause the occupant of such real estate to be removed therefrom, and the possession thereof to be delivered to him in the same manner and by the same proceedings by and before the same officers, as in the case of a tenant holding over after the expiration of his term without permission of his landlord.

§ 108. **Redemption from tax sale.** The owner of, or any person interested in any real estate sold for taxes as aforesaid, may redeem the same at any time within two years after the date of such sale by paying to the said chamberlain for the use of the purchaser upon such sale, his heirs and assigns, the sum mentioned in the certificate given to him, and the interest thereon at the rate of twelve per centum per annum, to be calculated from the date of such certificate, except as provided in the next section of this act. Notice shall be given by the purchaser of any real estate sold for taxes under the provisions of this act to the occupant, owner in fee, mortgagee, judgment-creditor or purchaser upon any other tax sale of the same property and the heirs or

assigns of any or either of them, and the guardian of any infants having an interest therein at least three months before the expiration of the time for redemption fixed by this act, and time for such redemption shall not be deemed to have expired until three months after such notice shall have been given. Such notice shall be either written or partly written and partly printed, and shall state briefly the lot or parcel of land to be redeemed, the tax, cost, interest and expenses required to be paid upon such redemption, and the last day of redemption of any such real estate, and the office or place within the city where the money for such redemption can be paid. Such notice shall be served personally or left with some person of suitable age and discretion at the residence or place of business of the persons entitled to such notice if they reside or have a place of business in the city. If such persons, or any of them, do not reside or have a place of business in the city, such notice shall be deposited, postage paid, in the post-office, addressed to them at the post-office at or nearest their known place of residence; and if the residence or address of any such person or persons be not known, then such notice shall be published at least once a week for three months prior to the day named therein for redemption in the official newspapers. The expense of mailing and publishing such notices shall be added to and become a part of the amount required to be paid for the redemption of such real estate. Such notices shall not be served, nor shall the publication thereof, when required be commenced within eighteen months after the date of the certificate.

* § 109. **Certificate and deed to purchaser.** If upon any such sale any piece of land be sold for more than amount then due for the tax, fees, interest and expenses, including the expense of advertising, the certificate delivered to the purchaser shall draw interest at the rate aforesaid only upon the amount due, and no interest upon any excess of such amount. If any such real estate, or any part thereof, be not redeemed as herein provided, the said chamberlain shall execute to the purchaser, his heirs or assigns, a conveyance of the real estate so sold, which conveyance shall vest in the grantee an absolute estate in fee. The said chamberlain shall be entitled to demand and receive from such grantee for the use of the city the sum of one dollar for preparing such conveyance. Every such conveyance shall be executed by said chamberlain under his hand and the seal of said city, and the execution thereof shall be acknowledged in the same manner as other conveyances of real estate. Such conveyance shall be conclusive evidence that the sale was regular, and presumptive evidence that all the previous proceedings were regular according to law and the provisions of this act. Every certificate or conveyance executed in pursuance of this act and acknowledged or proved before any

* As amended by Chap. 326, Laws of 1916.

officer authorized by law to take proof and acknowledgment of deeds may be recorded in the same manner and with like effect as a deed.

§ 110. **Reimbursement to purchaser on failure of title.** Whenever any purchaser under such sale, or his heirs or assigns, shall be unable to recover or retain possession of any real estate sold to him by reason of any irregularity or error in the assessment of any person or property, or the levying of any tax thereon, or in any proceeding for the collection of any tax, the common council of said city shall reimburse the purchase-money so paid, with interest at six per centum per annum from the time of its payment, the amount thereof to be presented and audited as other city charges, and paid by the chamberlain of said city.

§ 111. **Actions for collection of unpaid tax.** If any city tax imposed for any of the purposes mentioned in this act shall remain unpaid for six months after the warrant for its collection has been placed in the hands of the chamberlain, the said chamberlain may maintain an action in his name of office for the amount of such tax and fee and expenses remaining unpaid, with interest thereon at the rate of seven per centum per annum, to be computed from the first day of December of the year in which such tax was payable. Such action shall be brought against any person or corporation liable for such tax, or the representative of such person or corporation, in any court of competent jurisdiction in the same manner as other civil actions. The judgment obtained therein shall be enforced in the same manner as a judgment in other civil actions and shall be for the amount of such unpaid tax, and the interest, fees, and penalties allowed by law, including the costs and disbursements of the action. The amount collected by any such action shall be used and applied by said chamberlain in same manner as though the same had been collected by the sale of real estate. The warrant so delivered to the chamberlain shall be presumptive evidence that all the previous proceedings, including the assessing and levying of the tax, were regular and according to law. Nothing in this act contained shall be construed to repeal or abridge any other power or remedy for the collection of taxes in the city of Johnstown.

§ 112. **Application of this article to local assessments.** All the provisions of this article shall apply to and include the collection of all local assessments and the taxes for local improvements.

§ 113. **Correction of manifest errors.** Whenever there is manifest error in copying any assessment-roll, or in levying or extending any tax or assessment, the common council may at any time within six months after the completion of such assessment-roll by vote of two-thirds of all the members elected, correct, cancel, remit or add to the same, but shall have no power to alter any valuation made by the assessor; nor shall such amended assessment, if greater than the original assessment, be a

lien on the real estate for the amount added as against purchasers or mortgagees in good faith.

§ 114. **Reassessment.** In case any tax or assessment on property shall be void or shall have failed for want of jurisdiction, or for any irregularity in the levy or assessing thereof, the common council shall cause the same to be reassessed. Before making such reassessment the common council shall give to the owners of such property at such time, a notice of at least five days, and an opportunity to be heard, and on such hearing the council shall, as to such property, have the powers, and perform the duties of the officer or officers making the original assessment. If any person shall have paid on a former assessment, the same shall be credited, or in case the payment exceed the amount reassessed the surplus shall be refunded.

§ 115. **Surplus on sales.** Whenever any surplus shall arise upon the sale of lands for taxes, under the provisions of this act, the same shall remain in the custody of the chamberlain who shall keep a record thereof. The owner of the equity of redemption, or any other person interested in such surplus, may apply to any court of competent jurisdiction for an order distributing the same in the same way and manner as in proceedings for the distribution of surplus money in foreclosure actions. Any person making such application, or in any way sharing in the distribution of such money, shall be deemed to have waived all his rights for the recovery of the value or possession of such lands or any part thereof.

ARTICLE VI.

LOCAL IMPROVEMENTS; STREETS AND SEWERS.

Section 120. Common council to be highway commissioners.

121. General powers and duties of city engineer.

122. General duties of the superintendent of streets.

123. Improvements payable wholly or partly by local assessments.

124. Cost of sewer construction.

125. Declaration of intention to make local improvement.

126. When consent or petition of property owners required.

127. Curbs and gutters included as part of certain improvements.

128. District of assessment.

129. Special provisions as to sewers.

130. Notice of proposed improvement.

131. Objections to improvements and decision thereon.

132. Expenses, by whom assessed.

133. Assessment-roll.
134. Appeal from assessment.
135. Collection of local assessments.
136. Payment by installments for improved pavements; issue of bonds therefor.
137. Special provisions as to farm lands.
138. Construction and repair of sidewalks, curbstones, gutters and culverts.
139. Cleaning sidewalks and gutters.
140. Opening, altering, extending and laying out streets, et cetera.
141. Guardians ad litem.
142. Appointment, powers and duties of commissioners.
143. Confirmation or annulment of assessment; new assessment.
144. Compensation of commissioners; costs.
145. Authorizing improvement; collection of assessments; payments of awards, et cetera.
146. Additional assessments for local improvements.

§ 120. **Common council to be highway commissioners.** The common council shall be commissioners of highway in and for said city, and shall have all the powers and discharge all the duties of commissioners of highways in the towns in this State, except as otherwise provided in this act. The city of Johnstown is hereby declared a separate highway district, exempt from the supervision and control of the commissioner of highways of the town of Johnstown.

§ 121. **General powers and duties of city engineer.** The city engineer shall:

1. Keep in his office books and records, properly indexed, in which shall be entered the survey and map of every street, park, cemetery, avenue or lane, and the grade thereof, and sidewalks, water mains, sewers, and sewer inlets, with the location and grade thereof as far as practicable, heretofore established, or which may be established hereafter by the common council;

2. Perform all of the civil engineering required by the common council, the board of water commissioners, and by the other departments or boards and officers of said city;

3. Make all preliminary surveys for the opening, making, constructing, paving, macadamizing, repairing, grading, and establishing the grade of all streets, side-walks, cross-walks, gutters, sewers and sewer inlets, for the building or repairing of all bridges which the city is bound to maintain, for the laying of gas and water pipes and the setting of hy-

drants in the streets, and prepare plans, profiles and specifications therefor, whenever necessary, or when required to do so by the common council or other boards of said city;

4. Require all water mains, sewers and sewer inlets to be laid at grade as far as practicable;

5. Inspect all work which is being done for the city under plans and profiles and specifications prepared by him, and see that the same are complied with. Where any work is being done by the city under a contract in conformity with plans, profiles and specifications prepared by him no payments shall be made under such contract unless he shall certify that the work to be paid for has been performed in compliance with such plans, profiles and specifications;

6. Perform such other duties as may be required of him from time to time by the common council or other city boards, but shall have no power to contract any liability or debt on the part of the city, except as authorized by the common council or other city board.

* § 122. **General powers and duties of the superintendent of streets.** The superintendent of streets of said city shall, under the direction of the mayor and common council and such committees as the common council may designate, superintend and direct all work to be done or performed and all repairs and improvements to be made to and upon any of the public highways, streets, lanes, public places, walks, bridges, or other public grounds or property of said city, including the cleaning of the streets, the buliding and repairing of sewers, sidewalks and crosswalks, gutters and bridges, and the laying of gas pipes in the streets; he shall have authority to hire and employ the requisite laborers; to direct them as to the time and manner of their work; and shall certify to the common council all persons who shall have been employed by him; and shall act generally under the direction of the mayor and common council of the city and perform such other duties as the mayor and common council may require or prescribe. He shall at each regular meeting of the common council make a full report, in writing, of all work done or performed under his directions in such form as the common council may prescribe and shall present thereat a pay-roll in such form as the common council may prescribe, verified by his oath, setting forth the work done for the city under his charge since his last pay-roll, and specifying the name of each person employed thereon, the time he labored, his wages per day, and the amount due him. Said pay-rolls, and all other expenses incurred in the repair, care and improvement of the public streets, highways, sewers, bridges, sidewalks, gutters and crosswalks, and other public grounds and places of said city shall be audited by the common council, and, when audited, shall be paid from the street, sewer, or other proper fund of said city.

* As amended by Chap. 326, Laws of 1916.

The salary of the said superintendent of streets shall be paid by the common council from the street fund of said city.

§ 123. **Improvements payable wholly or partly by local assessments.** The expense of grading, filling, excavating, graveling, paving, or renewing, asphaltting or macadamizing any street or portion of a street in said city shall be paid as follows: The owners of the property fronting or adjoining such street shall pay two-thirds of the expense of the aforesaid work from the curbstone in front of such property to a line drawn two feet outside of the rail of the track of any street railway located on said street, and the remaining one-third of such expense shall be paid by the city out of the street fund: the owner or owners of said street railway shall pay the expense of said work between two parallel lines to be drawn two feet outside of each of the outside rails of the track or tracks of said street railway. In a street in which there is no street railway the owner of the property fronting upon or adjoining such street shall pay two-thirds of the cost of the aforesaid work from the curbstone in front of such property to the center line of said street, and one-third of the cost of the aforesaid work shall be paid by the city out of the street fund. The expense of grading, filling, excavating, graveling, paving, renewing, asphaltting, or macadamizing intersections of streets and repairing pavements shall be paid by the city out of the street fund, except that where a street railroad passes over any such intersection, the owner or owners of said street railroad shall pay the expense of said work between two parallel lines to be drawn two feet outside of each of the outside rails of the track or tracks of said street railway. The expense of repairing the streets and of ordinary work thereon shall be paid by the city out of the street fund. When the entire surface of a street, or of any block upon any street shall be recovered, resurfaced or renewed, such work shall not be deemed repairing under this section and the expense thereof shall be paid in the same manner as if the whole was new work, pursuant to the foregoing provisions of this section. In the assessment for any improvement as hereinafter provided, and in the payment and collection of such assessment, the owner or owners of any street railway, located on any street or portion of a street on which such improvement is made, shall in all respects be treated the same as an adjoining property owner on the street, and all provisions of this act in regard to such assessments, and the collection thereof from property owners and the payment by property owners of the expense of such improvements, shall apply to such owner or owners of such street railway; and such owner or owners of any such street railway shall not be at liberty, without the consent* of the common council of the city, to furnish the materials or do the work for any such improvement. When

* So in original.

the grade of a street has once been established by the city and such grade recorded and conformed to in the making of any local improvement, any change in the grade thereafter made must be made at the expense of the city.

§ 124. **Cost of sewer construction.** The expense of constructing sewers in said city shall be defrayed wholly by local assessment upon the property benefited thereby, unless the common council shall in the resolution declaring its intention to make such local improvement, determine that the whole or any portion thereof is properly chargeable against the city at large. If it shall so determine it shall designate by such resolution what part or proportion thereof is properly so chargeable. The part or proportion so designated shall be paid by the city at large out of the sewer fund, and the then remaining portion of the expense, if any, shall be defrayed by local assessment upon the property benefited thereby.

* § 125. **Declaration of intention to make local improvement.** No expenditures for any local improvement in said city, the expense of which is to be defrayed wholly or partly by local assessment, shall be incurred, unless the common council shall first by resolution declare its intention to make such local improvement. The common council may, by resolution, declare its intention to construct or repair sewers, gutters and sidewalks or to grade, fill, excavate, gravel, or sprinkle streets without preliminary petition therefor or consent thereto. The common council may also, by resolution adopted by the affirmative vote of at least two-thirds of all the aldermen in office and without preliminary petition thereof or consent thereto, declare its intention to cause any street, or public ground or place, or any part or parts thereof, in said city to be paved, repaved or improved with such material and in such manner as it shall prescribe; and, if necessary, to be properly graded or regraded for the purpose of such paving, repaving or improving the same.

§ 126. **When consent or petition of property owners required.** Except as provided in the preceding section and except as to the improvements mentioned in section one hundred and forty of this act, and as to which the provisions of this and the preceding section are not applicable, the common council shall not declare its intention to make local improvement, the expense of which is to be borne wholly or partially by local assessment, unless the owners of at least one-half of the total number of front feet linear measurement, or at least one-half in number of the owners of property on the street, or that part of a street, upon which the proposed improvement is to be made, petition therefor or consent thereto in writing, and a certificate of the city engineer be indorsed thereon or attached thereto, to the effect that he has examined such petition or consent, and that such required number of property owners

* As amended by Chap. 326, Laws of 1916.

have signed the same, which certificate shall be prima facie evidence of the facts therein contained; but the owner or owners of any street railway or the board of persons having the title, custody or control of any school property or public library shall not be considered or counted by the city engineer, as owner or owners, in examining the aforesaid petition or consent or making the aforesaid certificate.

§ 127. **Curbs and gutters included as part of certain improvements.** Whenever the common council shall deem it necessary to cause curbs to be set or reset or renewed, or gutters to be paved or repaved, on and along any street or portion thereof which is to be paved, asphalted, or macadamized, or on which the pavement, asphaltting or macadamizing it to be renewed, such setting or resetting or renewing of curbs, or paving or repaving of gutters, shall be included in and become a part of the proceedings and improvements of paving, asphaltting or macadamizing, or renewing of the paving, asphaltting or macadamizing of such street or part of a street, and in making the assessments as hereinafter provided such curbing or paving or repaving of gutters shall be included therein.

§ 128. **District of assessment.** After the common council shall have declared its intention to make any such local improvement, except as to gutters, sidewalks and sprinkling streets, and except as to any of the improvements mentioned in section one hundred and forty of this act, and as to which the provisions of this section are not applicable, before ordering the same done the common council shall establish a district of assessment, which shall contain all the property which, in the judgment of the common council, is likely to be benefited by such local improvement, and may at any time enlarge said district, and cause notices to be published and served upon all persons within such enlargement. As to gutters, sidewalks and sprinkling streets, the common council may establish a district of assessment or not in its discretion.

* § 129. **Special provisions as to sewers.** Each resolution of the common council declaring its intention to construct a sewer shall specify therein the two points between which it is proposed to construct the same, the size thereof, and the material of which it is proposed to be constructed. The city engineer shall forthwith on the passage of any such resolution make a survey and prepare a map showing all the property within the city likely to be benefited by such sewer, and a profile thereof, and an estimate of the material required, the total cost of constructing such sewer, and shall file such map, profile and estimate with the city clerk before the city clerk shall publish or serve notices of the proposed construction of such sewer. The common council may order sewers for the drainage of streets, cellars, buildings, lots, pools, vaults or for any other proper sewerage purpose, to be constructed in any street, and, with the consent

* As amended by Chap. 326, Laws of 1916.

of the owners in, upon or across any real property outside of a street. If the common council shall declare its intention to construct any sewer in, upon or across real property outside of the streets of said city, whether upon lands or easements owned by a railroad corporation or otherwise, and the owners of such real property or easement therein shall not consent thereto, and the city is unable to agree with the owners of such real property or of such easement upon the compensation to be made therefor, the common council, in the name and behalf of the city may acquire the necessary title, easement or right in or to such real property or easement for such sewer by condemnation in the mode prescribed in the code of civil procedure. The costs and expenses of such condemnation proceedings, together with the compensation paid to the owner or owners of such real property for such right, title or easement, shall be a part of the expense of the sewer for which the land, right or easement was acquired. Such sums for inspection of the sewer as the officer making the local assessment shall allow, based upon the actual cost thereof, shall be included in the expense of constructing the sewer.

*** § 130. Notice of proposed improvement.** If a district of assessment has been established, then upon the passage of a resolution of the common council declaring its intention to make a local improvement the expense of which is payable wholly or partly by local assessment, and if the local improvement be a sewer, upon the passage of such resolution and the filing by the city engineer of his map, profiles and estimates in relation thereto, the clerk shall prepare and sign a written notice of the proposed improvement, and stating that at a meeting of the common council to be held at a date specified therein the common council will hear any persons interested in relation to such improvements, who have filed objection as hereinafter provided. Any person interested in such improvement may file his objection thereto at any time prior to or at such meeting of the common council. All persons interested who do not file objections before or at such meeting shall be deemed to have acquiesced in the proposed improvement. Such notice shall be published at least once in each of the official newspapers of the city at least ten days before the expiration of the time for objecting thereto, and shall be served upon each person appearing by the records of the Fulton county clerk's office to be the owner of property within the district of assessment fixed for such improvement, as follows: By delivering to him personally a copy thereof or by leaving a copy thereof at his residence in said city with some member of his family or some person of suitable age or discretion, or by service as above described on his agent or other person having the property in charge, or by depositing it in the post-office properly enclosed and the postage prepaid thereon, directed to such owner at his

* As amended by Chap. 326, Laws of 1916.

last known place of residence. If there be two or more owners of any one piece of property, service on any one of them shall be sufficient notice to the owners of such piece of property. Affidavits of the service and publication of such notice may be filed or recorded, or both, in the office of the city clerk, and the affidavits or record thereof, or a certified copy of either, shall in all courts and places, actions or proceedings be prima facie evidence of the facts stated therein.

§ 131. Objections to improvements and decisions thereon. Objections to such improvements must be made in writing and filed with the city clerk, before or at the meeting specified in such notice, and the common council may, at the meeting specified in the notice, or at any regular meeting within two months, subject to the mayor's veto as in other cases, order the improvement to be made; but the provisions of this section shall not apply to any of the improvements mentioned in section one hundred and forty of this act.

§ 132. Expenses, by whom assessed. Upon the certificate of the city engineer that the work of any local improvement has been completed, excepting it be any of the improvements mentioned in section one hundred and forty of this act, as to which the provisions of this section are not applicable, the common council shall direct the cost thereof to be assessed by the city engineer; and it shall be the duty of said engineer to immediately assess the cost of such local improvement upon the property lying within the district of assessment declared for such improvement, if one has been established, and if not, then upon the property abutting upon such improvement in an equitable manner, as near as may be, in proportion to the benefits which each owner of such property may be deemed to derive therefrom, without reference to erections or improvements thereon; and when such local improvement consists of a sewer across real property outside of the streets of said city, and the city has acquired by purchase or condemnation the title, easement or right to such real property, said city engineer shall assess such part or proportion of the cost thereof upon the said city and such part locally as has been designated by the common council. Except as herein otherwise provided, the cost of any local improvement, shall be deemed to include the entire expense thereof (including inspection), except the engineering and publishing and serving notices. When the city engineer is disqualified to act by reason of owning or being interested in any real property within the district of assessment or by reason of relationship to any of the parties likely to be affected by the assessment therein for such local improvement, by consanguinity or affinity, within the sixth degree, to be determined in the same manner as in the case of a judge, or unable to act, his duties with reference to such assessment shall devolve upon and be performed by the city assessor.

* § 133. **Assessment-roll.** He shall make out an assessment-roll and a duplicate thereof, both of which shall be deemed originals, and set the amount of the tax assessed in the last column of the rolls, opposite the name of the person, corporation, association or property assessed, and shall leave the said rolls at the office of the city clerk, and thereupon give public notice in the official newspapers, at least once, at least one week, prior thereto, that such assessment-rolls have been prepared and will remain at the office of the city clerk for the term of fifteen days from the date of such notice, during which time any person interested may examine said rolls, and at the expiration of said fifteen days, and on the day and hour and at the place to be specified in said notice the said city engineer or city assessor, as the case may be, shall attend and hear any objections to said assessment, and shall decide upon the same and shall, if need be, alter and correct said assessment-rolls, and when completed, sign the same and file them with the city clerk.

§ 134. **Appeal from assessment. Any party thinking himself aggrieved may, at any time within ten days after filing the assessment-rolls with the city clerk, as provided in the last section, file with the city clerk a written notice of appeal therefrom, briefly stating the grounds of such appeal. The common council shall thereupon proceed to hear and determine such appeal or appeals, upon view of the property assessed or upon evidence, or both, and affirm or reverse the assessment. In case of affirmance, it shall be final and conclusive and the proceedings thereafter to collect the said assessment shall remain the same as if no appeal had been taken. Said assessment-roll shall be signed by the mayor and a majority of the aldermen in office. In case of reversal, the common council shall appoint three disinterested electors of the city as commissioners, who shall proceed in like manner, upon view of the property assessed or upon evidence, or both, to make a new assessment, and for such purpose be invested with the same powers as the city engineer or assessor had in making the original assessment. They shall make their tax-rolls in the same manner and sign the same and file them with the city clerk, and the same shall be final and conclusive on all parties. Such commissioners shall receive ten dollars per day for their services, to be paid by the city, unless the assessments of the appellants, as determined by said commissioners, shall be less favorable to them than the assessment appealed from, in which case the fees of such commissioners shall be paid by the appellants and added to the amount of their taxes respectively by the commissioners, in proportion to the amount thereof.

† § 135. **Collection of local assessment.** If no appeal be taken from the

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 326, Laws of 1916.

† As amended by Chap. 326, Laws of 1916.

first assessment-roll filed with the city clerk, or if an appeal be taken therefrom and such assessment be affirmed, the common council shall cause the proper warrant to be attached to one of said assessment-rolls and to the other a copy of said warrant, and the chamberlain's receipt for said special assessment-roll and warrant, and file the same with the city clerk, who shall deliver the said assessment-roll, with warrant attached, to the city chamberlain and secure his signature to the receipt therefor in the duplicate roll filed in his office. If an appeal be taken from such assessment and the same be reversed, the common council shall cause the proper warrant to be attached to one of the second assessment-rolls filed by such commissioners, and to the other a copy of said warrant and the chamberlain's receipt for said assessment-roll and warrant, and the city clerk shall deliver said assessment-roll and warrant to the chamberlain and secure his signature to the receipts therefor in the duplicate roll filed in his office. Said warrant shall be signed by the mayor and a majority of the aldermen in office. Whenever the assessment-roll and the warrant for its collection for any local improvement shall be left with the city chamberlain, he shall receive the taxes thereon for the first twenty days without fees, for twenty days thereafter at two per centum fees, and for the succeeding twenty days at five per centum fees, and shall give notice to that effect immediately upon receipt of said assessment-roll by publication thereof in the official papers of the city. If any such taxes remain unpaid at the expiration of sixty days from the time of the delivery of said assessment-roll to the chamberlain, the said chamberlain shall proceed to collect the same, with the fees thereon and interest thereon at the rate of six per centum per annum, in the same manner directed in this act for the collection of county or city taxes by distress and sale. The amounts so assessed shall be a lien on the lands and premises mentioned in said assessment-roll and adjoining which such improvements have been made, from the time of the filing of the same in the office of the city clerk, and the common council may, in its discretion, sue for and recover in a civil action of the owner any sum which shall remain unpaid after the expiration of sixty days from the filing of said assessment-roll.

*** § 136. Payment by installments for improved pavements; issue of bonds therefor.** Whenever the common council, in accordance with the provisions of this act, shall have declared its intention to pave or repave with asphalt, granite or other improved pavement, or to macadamize or remacadamize any street or part of a street, the said common council may, by resolution adopted by a two-thirds affirmative vote of all the aldermen in office, declare that all the provisions of this section shall apply to the making of such improvement, the assessment of the cost thereof, and the payment of such assessment. The common council shall

* As amended by Chap. 671, Laws of 1907.

thereupon authorize and direct the city engineer to make all necessary surveys, establish all grades, and prepare all necessary plans and specifications for such improvement. The city engineer shall have charge of and superintend the same until its completion and furnish an estimate of the probable cost and expense thereof. A map showing the surveys made and grades established, together with the plans and specifications adopted by the common council, shall be filed with the city clerk.

* a. After the adoption of the plans and specifications as herein provided and the determination of the kind and quality of materials to be used in making such improvement, the common council may advertise and receive sealed proposals therefor, in such manner as the common council shall prescribe, and the contract therefor may be let to the lowest responsible bidder who shall comply with the requirements of the common council, in giving a satisfactory bond for the faithful performance of the contract, and indemnifying the city from damages arising out of the performance thereof; or the common council may, in its discretion, cause such improvement to be made either by contract let as above provided, or by its servants or employees without the letting of a contract therefor.

**b. The common council shall, within a reasonable time after the completion of such improvement, direct the cost thereof to be assessed by the city engineer, or in case of his disqualification, by the city assessor, as provided in section one hundred and thirty-two of this act. The cost of such improvement shall be assessed as provided in section one hundred and twenty-three of this act, and sections one hundred and thirty-three, one hundred and thirty-four and one hundred and thirty-five of this act shall apply to the making of such assessment and the collection thereof, except as otherwise provided in this section.

c. The assessments made on account of such improvement shall be payable in five equal annual installments. The first installment shall be payable immediately after the delivery of the first warrant for the collection thereof to the city chamberlain, and the remaining installments shall be payable each successive year thereafter on warrants issued for the collection thereof, with interest on the whole amount of such assessment remaining unpaid, at the same rate as is provided in the bonds or certificate of indebtedness hereinafter mentioned from the twentieth day after the first warrant is so delivered to the chamberlain, payable with each of said installments, and every installment of such assessment with accrued interest thereon shall be a lien upon the real estate against which the same was assessed. The proceeds of all assessments and taxes collected by the chamberlain of the persons assessed, as provided in this section, shall be applied to the payment of the bonds or

* As amended by Chap. 671, Laws of 1907, and Chap. 326, Laws of 1916.

** As amended by Chap. 671, Laws of 1907.

certificates of indebtedness hereinafter provided for, and the interest thereon, as the same shall become due; and, in no case, shall the proceeds of such taxes or assessments be used for any other purpose than the payment of said bonds or certificates of indebtedness and the interest thereon, except the first installment thereof, which shall be applied to the payment of the cost of such improvement.

d. One-fifth of such portion of the cost of such improvement as, under the provisions of section one hundred and twenty-three of this act, is payable by the city, shall be paid by the common council out of the street fund of said city, levied and collected for the year in which such improvement is made, and one-fifth of the city's portion of the cost of such improvement, with interest on the bonds or certificates of indebtedness issued to provide for the payment of the remaining four-fifths of the city's portion of the cost of such improvement, as hereinafter provided, remaining outstanding and unpaid, shall be appropriated from the city taxes raised annually each year thereafter, until the city's portion of such improvement has been provided for, and transferred by the common council from the street fund to the pavement fund, and used and applied by the common council in paying and cancelling the bonds or certificates of indebtedness issued pursuant to this section and the interest thereon.

e. To provide for the payment of the remaining four-fifths of that portion of the cost of such improvement as, under section one hundred and twenty-three of this act, is payable by the city, and to provide funds for the payment of such portion of the cost of such improvement as shall have been locally assessed as herein provided and remains unpaid, the common council may borrow upon the faith and credit of the city such money as may be necessary, to the extent of four-fifths of the total cost of such improvement, and may issue bonds therefor payable at such times and in such amounts as such local assessments before specified shall become due and payable, and as such portion of the cost of such improvement as is payable by the city is provided herein to be raised, as near as may be practicable. Each of said bonds shall be signed by the mayor and countersigned by the clerk and the chamberlain of said city, and shall be delivered, when issued, to the chamberlain and shall be sold by him as provided in this act. All moneys derived from the sale of said bonds shall be kept by the chamberlain as a separate fund, designated as the pavement fund, and all moneys paid from said fund shall be upon warrants of the common council, signed by the mayor, countersigned by the city clerk, and accepted by the city chamberlain of said city, payable at the bank where the fund upon which they are drawn is deposited.

f. If any of said installments, so locally assessed, or any part thereof, either principal or interest, shall remain unpaid for sixty days after the time of the delivery of the warrant for the collection thereof to the

chamberlain, then and in that case, the whole amount of such unpaid assessment, together with the interest thereon for the full time for which such payments were extended or deferred, against the defaulting party, shall become due and payable immediately after the default so made, and the common council shall, by its warrant, command the said chamberlain to collect the same, with interest, costs and fees, immediately, and the same shall be collected in the manner provided by this act for the collection of assessments for other local improvements.

g. No action to set aside, cancel or annul any assessment made under the provisions of this section shall be maintained by any person, unless such action shall have been commenced within thirty days after the delivery to the city chamberlain of the first assessment-roll and warrant as provided in this act, and unless within thirty days an injunction shall have been procured by such person from a court of competent jurisdiction restraining the common council from issuing bonds as hereinbefore provided.

§ 137. **Special provisions as to farm lands.** Whenever any street or part of a street in said city has been macadamized or remacadamized, paved or repaved with brick, granite, asphalt or other improved pavement, and the cost and expense thereof has been assessed as provided in section one hundred and twenty-three of this act, and lands chargeable with the payment of any portion of such cost and expense were designated in the last preceding assessment-roll as farm lands, the common council shall thereupon by resolution remit fifty per centum of the sum assessed against the owner of such farm lands by reason of his ownership thereof, and direct the payment of the sum so remitted out of the street fund.

* § 138. **Construction and repair of sidewalks, curbstones, gutters and culverts; payment by installments; issue of bonds therefor.** Whenever the common council shall deem it necessary that any sidewalk, curbstone, gutter or culvert be made, constructed, reset, relaid, or repaired, as a distinct and independent improvement unconnected with the paving, asphaltting, or macadamizing of the adjoining street, it may by ordinance require that such improvement be made by or at the expense of the owner or occupant of the adjoining property. Such ordinance shall prescribe the materials to be used in making such improvement, the width and thickness thereof if the improvement be a sidewalk, the form and manner of construction if the improvement be a curbstone, gutter or culvert, the time within which the work shall be done, and shall require that such improvement shall conform to the grade established or to be established therefor. At least ten days before the expiration of the time specified in the ordinance the common council shall cause to be served upon the owners

* As amended by Chap. 671, Laws of 1907.

or occupants of the land adjoining such sidewalk, curbstones, gutter or culvert so to be improved as aforesaid, a copy of such ordinance, with a notice that if the work therein required be not done by such owners or occupants within the time specified in such ordinance the common council will cause the same to be done at the expense of such owner or occupant. Such notice and ordinance shall be served upon each of such owners or occupants by delivering a copy thereof to him personally, or by leaving the same in his absence with some member of his family or some person of suitable age and discretion residing with him, if he be a resident of the city, or otherwise on his agent or other person having charge of the property, or by depositing the same in the post-office, properly inclosed and the postage prepaid thereon, and directed to such owner at his last known place of residence; or in case such owner or his place of residence is unknown, and there be no resident agent or occupant to the knowledge of the common council, by affixing a copy of such ordinance and notice upon a conspicuous part of the premises. If there be two or more owners of any piece of property service upon one of them shall be sufficient. Affidavits of the publication or service of such notice and ordinance may be filed or recorded, or both, in the office of the clerk of said city, and the affidavits or the record thereof, or a certified copy of either, shall in all courts and places, actions and proceedings, be prima facie evidence of the facts therein stated. If the improvement directed by the ordinance is not completed as required within the time specified therein, the common council may cause the improvement to be made, and having done so, shall, without giving any other or further notice, upon affidavits of the city engineer or superintendent of streets having the work in charge as the case may be, showing the actual expense thereof, which affidavits shall be filed with the city clerk, proceed to make a special assessment-roll and duplicate thereof, both of which shall be deemed originals, assessing against the delinquent owners or occupants and upon each parcel or lot of land owned or occupied by them immediately adjoining the sidewalk, curbstones, gutter or culvert so built or repaired by the city, the cost and expense of such improvement, which assessment-rolls when completed shall be filed in the office of the city clerk. Whereupon the city clerk shall give notice in the official newspapers of the city that the special assessment-roll has been left with him and may be examined by any party interested, and that at a time and place to be specified in said notice, which shall not be less than ten days from the first publication thereof, the common council will hear and act upon the application of any person deeming himself aggrieved by said special assessment. After hearing all such applications the common council may proceed to make such alterations and corrections, if any, in said special assessment-roll as it may deem just, and by resolution confirm the same, and said assessment shall thereupon become and be final and conclusive upon all parties interested in said real estate or

affected thereby, and the amount assessed shall be a lien upon the lands and premises mentioned in said assessment-roll and adjoining which said improvements have been made. Where an assessment has been made under this section to defray the cost and expense of constructing a sidewalk of stone or cement, or of any material other than wood, the common council, at the time it shall confirm the assessment, may provide by ordinance adopted by a two-thirds affirmative vote of all the aldermen in office, that the owners or occupants of any real estate against which such assessment has been made may have the privilege of paying their respective assessments in five annual installments, as near equal as may be, upon filing with the city clerk, within a time specified in the ordinance their election and agreement to pay such assessments in five annual installments with interest thereon at five per centum per annum, payable annually. Such ordinance shall be published at least once in the official newspapers of the city not less than ten days prior to the expiration of the time specified in the ordinance, and a copy of the ordinance with notice of its adoption shall be served upon each of the persons so assessed, by depositing a copy thereof, inclosed in a post-paid wrapper, addressed to the person assessed at his or her last known place or residence in the post-office in the city of Johnstown, at least five days prior to the time specified in such ordinance for filing such election and agreement. In case any person assessed shall fail or neglect to file with the city clerk such election and agreement within the time limited such failure or neglect shall be deemed a rejection of the privilege of paying the assessment by installments, and his or her assessment shall thereafter be payable as an entire sum. After the expiration of the time within which such election and agreement may be made, if the assessment relates to the construction or repair of a sidewalk, or after the confirmation of the assessment, if the assessment relates to the construction, setting, laying, or resetting or relaying of a curb, gutter or culvert, if no appeal has been taken from the assessment as provided in section one hundred and thirty-four of this act, or if an appeal therefrom has been taken and such assessment has been affirmed, such special assessment-roll, together with a warrant for the collection of taxes therein assessed, and each election and agreement, if any, to pay in installments as above provided, shall be left with the city chamberlain who shall proceed to collect such taxes with his fees thereon. Sections one hundred and thirty-three, one hundred and thirty-four and one hundred and thirty-five of this act shall apply to the making of the assessment and the collection thereof except as otherwise provided in this section. Every assessment for the construction or repair of a curb, gutter or culvert, and every assessment for the construction or repair of a sidewalk where the same has not been made payable in installments as in this section provided, shall be payable upon the delivery of the warrant for the collection thereof to the city chamberlain; and every

assessment for the construction or repair of a sidewalk as to which an election and agreement to pay in instalments has been filed as herein provided under an ordinance providing therefor, shall be payable in equal annual installments, the first installment shall be payable upon the delivery of the warrant for the collection of the assessment to the city chamberlain, and each subsequent installment, together with interest at the rate of five per centum per annum upon the whole amount of the assessment remaining outstanding and unpaid, shall be payable annually thereafter until fully paid. If any of said installments, or any part thereof, either of principal or interest, shall remain unpaid for sixty days after the time when the same shall be payable, then and in that case the whole amount of the assessment remaining unpaid, together with the interest thereon for the full time for which payments were extended or deferred, shall upon such default become due and payable immediately, and the city chamberlain shall thereupon in writing notify the common council of such default and of the amount outstanding and unpaid, and the common council shall by its warrant direct the chamberlain forthwith to collect the amount remaining unpaid with interest, costs and fees, and the same shall be collectible and collected accordingly. Whenever under this section the expense of the construction or repair of a sidewalk or sidewalks has become payable, in whole or in part, in installments with annual interests, the common council may borrow upon the faith and credit of the city such money as may be necessary to anticipate the payment of installments not due at the time of the issuing to the chamberlain the special assessment-roll and warrant for the collection thereof, and may issue bonds therefor, payable at such times, not exceeding five years, with interest not exceeding five per centum per annum, as it may deem advisable. Each bond so issued shall be signed by the mayor and countersigned by the city clerk and city chamberlain, and shall be delivered, when issued, to the chamberlain, and shall be sold by him as provided by this act, and the funds derived from the payment of the anticipated installments as they become due shall be set apart as a special fund and shall be applied to the payment of said bonds, and not otherwise. No action to set aside, cancel or annul any assessment made under the provisions of this section shall be maintained by any person, unless such action shall have been commenced within thirty days after the delivery to the city chamberlain of the special assessment-roll and warrant as provided in this act, and unless, in case bonds may be issued under this section, within such thirty days an injunction shall have been procured from a court of competent jurisdiction restraining the common council from issuing bonds as hereinbefore provided. The gutters in streets paved, asphalted or macadamized, in whole or in part, by local assessment shall be kept in repair at the expense of the city. Whenever the grade of any sidewalk has been es-

tablished by the city and recorded, and has been conformed to by the owner of any adjoining property, any change of grade thereafter made by the city must be made at the expense of the city.

*** § 139. Cleaning sidewalks and gutters.** It shall be the duty of the owner of every lot or piece of land to keep the gutters, including the culverts, and the sidewalks adjoining his lot or piece of land at all times clean and free from snow, ice or other obstructions. It shall be the duty of such owner to remove new ice and freshly fallen snow from such sidewalk before twelve o'clock of each day, and to keep the same so cleaned and removed at all times. In case such owner or occupant shall neglect or refuse to clean said sidewalk within such time, he shall be subject to such fine or penalty therefor as shall be prescribed by the common council, and in addition thereto the superintendent of streets shall, in such case, proceed to clean the same without notice to such owner or occupant. In case any sidewalk or any such other gutter or culvert in said city shall, at any time, in the judgment of the superintendent of streets otherwise require cleaning, said superintendent shall serve a notice upon the owner of the adjoining lot requiring him to clean the same within twenty-four hours after the service of such notice. Such notice shall be served in the same manner as the notice for the construction or repair of sidewalks, curbstones, gutters and culverts, as provided in the next preceding section. If such notice be served by mail the owner shall have three days after service thereof within which to comply with such requirements. If any person so required to do any such cleaning, shall neglect or refuse to do the same within the time prescribed therefor, the said superintendent shall clean the same in such manner as he shall deem proper and suitable, in which case he shall report the fact and the expense thereof to the city clerk, who shall give notice of the expense thereof to the owner in the same manner as notice to do the cleaning, requiring the payment of such expense to the city chamberlain within ten days after the delivery or mailing of such a statement. If such expense be not paid to the city chamberlain within the time prescribed therefor, the said superintendent shall file his affidavit of the actual expense thereof with the clerk of the city, and the same shall thereupon be assessed by the common council and collected the same as other local assessments, with interest thereon at the rate of six per centum per annum from the time such affidavit was filed.

§ 140. Opening, altering, extending and laying out streets, et cetera. The common council may lay out, open and construct streets and public grounds and places in said city, and alter, widen, contract, straighten, extend or discontinue any street, public ground or place in said city, and may acquire the land necessary therefor. It may by ordinance

* As amended by Chap. 660, Laws of 1910.

declare its intention to make such improvement and may therein determine to assess the expense and damage incurred and occasioned thereby in the manner hereinafter provided. Where the common council has declared its intention to make such improvement it shall immediately direct the city engineer to make a survey, map and profile of the street, public ground or place, and of the adjoining or abutting premises affected by such improvement, which map shall show the situation then existing and the changes or improvements proposed to be made, and shall also direct the said city engineer to prepare plans, specifications and estimates for the construction of such improvements, showing as accurately as may be the nature and cost thereof. For the purpose of making such survey, map, profile, plans, specifications and estimates, the city engineer, and those acting under his direction, may enter upon any lands in the city. Such map, profile, plans, specifications and estimates shall, when completed, be filed by the city engineer with the city clerk. If the common council shall approve of such map, profile, plans, specifications and estimates, it shall direct the city clerk to give notice of its intention to make such improvement to the owner or owners of the lands to be taken, appropriated or affected by such improvement, and to the persons interested in such lands, by publishing such notice once in each week for two consecutive weeks in the official newspapers of the city. Such notice shall specify in general terms the improvement to be made, and shall state that such owner or owners, on or before a day to be therein specified, may file their claims for damages, if any they have, on account of such taking, appropriation and improvement, with the clerk of said city; that such claims shall be in writing, subscribed by the claimant; and that in case any claim for damage shall be filed as aforesaid the common council will apply at a time and place to be specified in said notice to a special term of the supreme court in the fifth judicial district, or to the county court of Fulton county, for the appointment of three commissioners to ascertain and assess the damages so claimed. In case no claim for damages shall be filed as above provided, such owner or owners shall be deemed to have waived all claim to damages and have consented and agreed to such improvement.

§ 141. **Guardians ad litem.** When there are infants or other incompetent persons owners, whose property is affected by any improvement provided for by section one hundred and forty of this act, the court to whom application for the appointment of commissioners is made or a judge or justice thereof, shall appoint guardians ad litem therefor to protect the rights and interests of said incompetent persons.

§ 142. **Appointment, powers and duties of commissioners.** If a claim is filed as provided in section one hundred and forty of this act, the common council, at the time and place specified in the notice, shall apply to the court named therein for the appointment of such commissioners. Such

application shall be based upon a petition signed and verified by the mayor. The petition shall state briefly and in general terms the prior proceedings had in the matter, the nature of the improvement proposed to be made, and describe the lands to be taken and appropriated therefor or affected thereby. The petition shall also state the names and places of residence of the owners of the lands so taken, appropriated or affected, if the same are known to the mayor or can be ascertained by reasonable inquiry, and if the names and places of residence are unknown and cannot be ascertained by reasonable inquiry, that fact may be stated and the extent of the inquiry made. If the owner of the lands is a non-resident having an agent or attorney residing in this state authorized to contract for the sale of the lands, the name and place of residence of such agent or attorney shall be stated in the petition, if the facts are known to the person verifying the same. The petition shall also state that the proceedings is brought by the common council under sections one hundred and forty and one hundred and forty-two of this act, and if any of the persons whose property is affected by the improvement are infants or incompetent persons, that fact shall be stated. A copy of such petition shall be served in the same manner as a summons in an action in the supreme court upon all persons who have filed claims as provided in section one hundred and forty of this act, at least eight days before the time when the application is to be made as specified in the notice. If it shall appear upon the hearing that the facts stated in the petition are true, or if the same are not controverted, and it shall also appear that the lands are to be taken and appropriated for a public use, the court shall appoint three commissioners who shall, enter upon the performance of their duties without delay, shall each take and subscribe an oath before some officer authorized to administer oaths, faithfully, honestly and impartially to perform his duty in making such ascertainment and assessment according to the best of his ability. Said commissioners shall give notice of the time and place of their meeting to make such ascertainment and assessment by publishing the same once in the official newspapers of said city. At the time and place so appointed for the meeting, they shall view the premises, and in their discretion receive any legal evidence, and may, if necessary, adjourn from day to day. They shall determine and award to the owner or owners so claiming damages as aforesaid, such damages, if any, as in their judgment such owners will sustain by reason of such improvement being made, after making due allowance for any benefit such owner or owners may derive therefrom. They shall at the same time assess and apportion the said damages, if any, on account of the making of such improvement, on the real estate, and against the persons benefited thereby as nearly as may be in proportion to the benefit resulting therefrom. If the whole of such damages cannot justly and equitably be assessed upon the real estate

as above provided, in the judgment of said commissioners, the said commissioners shall assess only such portion thereon as in their opinion will be equitable and just, and the balance thereof shall be paid out of the street fund of said city, and said commissioners shall so state in their determination. The said commissioners shall briefly describe the real estate upon which any assessment is so made by them, and shall designate the owner or owners of the several parcels of the said real estate, and what parcels, if any, are owned by non-residents, according to the best information they can obtain. If there be any building taken for such improvement, the value thereof to remove shall be ascertained by said commissioners and stated in their determination, and the owner thereof may remove the same within ten days, or such other time as the common council may allow after confirmation of the assessment and return of the commissioners; and if the same be so removed the value thereof as ascertained by said commissioners shall be deducted from any damages* awarded such owner; if such building be not so removed by the owner within the time aforesaid, it may be sold by the common council, at public auction to the highest bidder, and removed by the purchaser at such sale within a time to be fixed by the common council, and the proceeds of such sale shall be paid to the chamberlain and by him placed in the street fund, and applied towards the moneys required for making such improvement. The determination and assessment of the commissioners, signed by all of them, shall be returned to the common council within sixty days after their appointment, but the time during which an injunction shall prevent any action in regard to said improvement, and the time during which any appeal from any order of a court, or any determination of the common council, in the proceeding for the making of said improvement or in relation thereto, shall be pending and undetermined, shall form no part of the said sixty days. If any of the commissioners shall be unable to serve or continue in service from sickness or other cause, the common council may at any time without further notice make application to the court which appointed said commissioners to have some suitable person appointed in his stead, and such court shall thereupon make such appointment; and said commissioners shall proceed in the same manner as if no such change in the commissioners originally appointed had been made, but in case of such disability and the appointment as above provided of another commissioner, the time between the occurring of such disability and the appointment of a new commissioner, shall form no part of the sixty days within which it is above provided said commissioners must return their determination and assessment to the common council.

§ 143. Confirmation or annulment of assessment; new assessment.

* So in original.

After the determination and assessment of the commissioners provided for in the preceding section shall be returned to the council, it shall give notice by publishing the same once in the official newspapers of said city, that at a time and place to be specified in said notice, the same may be confirmed by said common council, unless objection thereto be made by some interested person. All such objections shall be made in writing and filed with the city clerk. If no objection shall have been filed, such determination and assessment may be confirmed by said common council at the time and place named in the aforesaid notice, and the same if confirmed shall be final and conclusive; but if objection shall have been filed as aforesaid, the persons so filing the same shall have a right to be heard in regard thereto on the day specified in said notice, or on such day or days as the common council may appoint; and the said common council shall thereupon either confirm such determination and assessment or annul the same. If the common council confirm the same it shall be final and conclusive; but if the common council annul the same it shall refer the matter back to the same commissioners, or to three others to be appointed upon application, without notice, by one of the courts authorized to appoint the original commissioners as provided in the preceding section. The commissioners to whom such matter shall be so referred back, or the new commissioners so appointed, shall proceed in the same manner as in the case of an original determination and assessment, and the common council shall proceed thereon as though it were the original determination and assessment. If the common council shall confirm the second determination and assessment, the same shall be final and conclusive on all parties interested; but if it annul the same, then all proceedings in regard to the matter shall be void.

* § 144. **Compensation of commissioners; costs.** The commissioners appointed as in sections one hundred and forty-two and one hundred and forty-three of this act provided shall each be allowed and paid ten dollars for each day actually and necessarily employed in and about their duties; and such compensation and fees and the charges of surveyors and other necessary costs and expenses, all of which shall be audited by the common council, shall be considered part of the expenses of such improvement, and shall be assessed with and as a part of the damages as provided in sections one hundred and forty and one hundred and forty-three of this act. If the second determination and assessment is annulled by the common council the compensation of the commissioners and all other necessary costs and expenses shall be audited by the common council and paid out of the street fund.

§ 145. **Authorizing improvements; collection of assessments; pay-**

* As amended by Chap. 326, Laws of 1916.

ment of awards, et cetera. After the final determination and assessment provided for in sections one hundred and forty and one hundred and forty-three of this act shall have been confirmed by the common council, the same shall be filed in the office of the city clerk, and thereupon said common council may authorize said improvements to be made and completed. In all cases where the whole of any real estate subject to any lease or agreement shall be taken for such improvements, all the covenants and stipulations contained in such agreement shall upon the final confirmation of the proceedings for such improvement, and the direction by the common council to make the same, determine, and be absolutely void, and in case where a part only of such real estate shall be taken, the said covenants and stipulations shall be discharged only as to the part so taken, and the county court of Fulton county may on application in writing of either or any of the parties interested in such lease or agreement appoint three disinterested freeholders to determine the rents, payments, and conditions which shall thereafter be paid and performed under such lease or agreement in respect to the residue of such real estate; and the report of the freeholders, or any two of them, on being confirmed by said court, shall be binding and conclusive upon all parties interested in such real estate. The assessment made by such commissioners as in said sections one hundred and forty and one hundred and forty-three of this act provided shall conform as nearly as may be to the special assessment-rolls made by the common council as provided by this act. Immediately upon the confirmation of such assessment, the same, together with a duplicate thereof, shall be filed with the city clerk, and both shall be deemed originals; to one of said rolls shall be annexed a warrant signed by the mayor and a majority of the aldermen in office for the collection of said assessment, and delivered to the city chamberlain of said city for collection; and to the other shall be annexed a copy of said warrant with a receipt by the said chamberlain acknowledging the receipt of said assessment-roll and warrant. The said assessments shall constitute a lien upon the lands and premises respectively upon, or for, or in respect of which they shall be made. Such assessments shall be collected by the said chamberlain in the same manner and with the same fees and within the same time as prescribed by section one hundred and thirty-five of this act for the collection of the assessments in said section referred to; but the provisions of sections one hundred and thirty-three and one hundred and thirty-four of this act, and of said section one hundred and thirty-five, save only as hereinabove provided for the collection of the assessment therefor shall not be applicable to the assessments for the improvements mentioned in section one hundred and forty of this act. From the assessments so collected, if sufficient, and if any deficiency therein from the street fund, each award shall be paid to the person entitled thereto

after the expiration of ninety days from the final confirmation of said award and assessments, and it shall not draw interest until two days after a demand in writing, for a payment thereof, after the expiration of said ninety days, shall be made to the city clerk and filed with him. The common council shall issue its orders upon the chamberlain for the payment of said awards to the several persons entitled thereto.

§ 146. **Additional assessments for local improvement.** In case the amount assessed for any local improvement shall be insufficient to defray the expenses of such improvement, the common council shall cause to be assessed, in like manner as other assessments of like nature, the amount which the actual expense thereof exceeds the amount first assessed.

ARTICLE VII.

BOARD OF WATER COMMISSIONERS; WATER WORKS.

Section 160. Board of water commissioners,* how constituted and organized.

161. Presiding officer; temporary president.
162. Meetings.
163. Rules; quorum; voting.
164. Compelling attendance of absent commissioners.
165. Bond of water commissioners.
166. Filling vacancies in office of water commissioner.
167. Duty of superintendent of water works.
168. Special provisions as to work in streets.
169. Laborers, number and wages.
170. General powers and duties of the board of water commissioners.
171. Annual report of board.
172. Books and papers open to public inspection; evidence.
173. Apportionment of water rents.
174. Collection of water rents.
175. Liens for water rents, fines and penalties.
176. Application of income from water-works.
177. The sinking fund for payment of water bonds.
178. Right to use certain streets and highways.
179. Sale of water outside of city limits.

* So in original.

- 180. Contracts.
- 181. Expense of supply pipes.
- 182. Audit of claims; payment.
- 183. Control of property purchased for use of the water-works.
- 184. Annual settlement of board with chamberlain.
- 185. Powers of water commissioners in procuring additional supply.
- 186. Loan for water supply and issue of bonds.
- 187. Proceedings for incurring indebtedness exceeding limit.
- 188. Question of additional water supply to be submitted to a vote of the people.

Section 160. Board of water commissioners, how constituted and organized. The board of water commissioners shall be composed of the water commissioner-at-large, and the water commissioners elected by the several wards. The board of water commissioners shall meet annually in the room provided for that purpose on the first day of January, or if that be Sunday, then on the next day, at eleven o'clock in the forenoon for the purpose of organization. Such meeting shall be called the annual meeting of the board of water commissioners.

§ 161. **Presiding officer; temporary president.** The water commissioner-at-large shall preside at all regular and special meetings and shall have a vote upon all questions acted upon by the board. At the annual meeting of the board, or as soon thereafter as practicable, the board shall choose one of its members to be temporary president, who shall, during the official year, be the presiding officer of the board in the absence of the president, and while such president is absent from the city or unable to perform his duties, he shall be acting president of the board and have all the powers and duties and be subject to all the obligations and liabilities of the president.

§ 162. **Meetings.** The board of water commissioners shall hold regular meetings in the common council room, or such other room as may be set apart for their use in the city building, on the first and third Tuesday evenings in each month, and at such other times as it shall by resolution designate. The president of the board, or any two of its members, may call a special meeting by causing a written notice thereof specifying the objects of the meeting to be served by the city clerk upon each member of the board, not joining in such notice, personally, or by mail, directed to his place of residence or place of business, at least twenty-four hours before the time of such meeting. All meetings of the board shall be public, except when the public interest shall require secrecy; but no vote shall be taken in secret or executive session.

§ 163. **Rules; quorum; voting.** The board shall determine the rules of its own proceedings and be the judge of the election and qualifications of its own members. A majority of the whole number of water commissioners shall constitute a quorum of the board, but a smaller number may adjourn from time to time. At all meetings of the board each water commissioner present shall have one vote. A majority of the water commissioners present and voting at any meeting of the board at which a quorum shall be present shall be sufficient to pass any resolution, except that no resolution authorizing or involving the expenditure of money or the collection of money by a tax or assessment shall pass unless it receive the assent of a majority of all the water commissioners in office. The ayes and noes shall be called and recorded on all resolutions.

§ 164. **Compelling attendance of absent commissioners.** The attendance of absent water commissioners may be compelled by the board, or by a meeting thereof at which less than a quorum is present, by the entry of a resolution and order in the minutes, directing the chief of police or any police officer of the city to arrest such absent commissioner and take him before the board at the meeting at which such commissioner was absent, or at some subsequent meeting of the board, to answer for his neglect.

* § 165. **Bond of water commissioners.** Before entering upon the duties of his office each water commissioner shall execute a bond to the city of Johnstown, in accordance with the provisions of section twenty of this act, in an amount not less than five hundred dollars, conditioned for the faithful discharge of his duties as such water commissioner. Such bond shall be procured from some solvent surety company; shall be approved by the common council; and the expense of procuring the same shall be paid from the income of the water works.

§ 166. **Filling vacancies in office of water commissioners.** If a vacancy shall occur, otherwise than by expiration of term, in the office of water commissioner, the board of water commissioners shall appoint a person to fill such vacancy until the end of the official year in which such vacancy occurs. The provisions of section twenty-three relating to the filling of vacancies to elective offices shall apply to a vacancy in the office of a water commissioner, except as herein specified.

§ 167. **Duty of superintendent of waterworks.** The superintendent of waterworks shall, under the direction of the board of water commissioners of said city, have the general supervision, care and management of the waterworks of said city and of all the property, real and personal, now used, or hereafter purchased by the city for the use and benefit of the waterworks of said city, including pipe lines, reservoirs,

* Original section repealed and new section added by Chap. 660, Laws of 1910.

hydrants, machines, tools and implements; he shall see that they are kept in proper repair; he shall frequently make a personal inspection of each hydrant in the city, and take all possible precautions to prevent the same from freezing during the winter months; he shall see that the reservoirs are kept clean and in good condition; he shall personally superintend the laying of all extentions of water pipes, tapping of pipes, setting of hydrants, repairing of leaks in water mains and the flushing of sewers, when directed so to do by the president of the board of water commissioners or the mayor; and he shall perform such other duties as the board of water commissioners shall or may prescribe. He shall have authority to hire and employ the requisite laborers for the performance of such work, and to direct them as to the manner and time of the execution of their work; and he shall certify to the board of water commissioners all persons who shall have been employed by him. He shall at each regular meeting of the board of water commissioners present thereto a pay roll in such form as the board of water commissioners may prescribe, verified by his oath, setting forth the work so performed under his charge since his last pay roll, and specifying the name of each person employed thereon, the time he labored, his wages per day, and the amount due him. Said pay rolls, and all other expenses lawfully incurred in the care and management of the waterworks system and property, shall be audited by the board of water commissioners, and, when audited, shall be paid from the water fund of said city upon the warrants of the board of water commissioners, signed by the president of said board and countersigned by the clerk. The salary of the superintendent of waterworks shall be paid by the board of water commissioners from the water fund of said city.

§ 168. Special provisions as to work in streets. Whenever in the performance of his duties it shall be necessary for the superintendent of water works to make excavations in any street in said city, he shall act under the general direction and supervision of the superintendent of streets as to the guards to be placed at the openings made, as to the precautions to be taken to prevent injuries to persons using the street for street purposes, and as to the manner of restoring the street to its former condition, including the restoration of any pavement which has been taken up or disturbed in the progress of the work. In case of any disagreement or controversy between these officers as to their respective rights and duties in the matters above mentioned, the questions in dispute shall be referred by them to the mayor whose decision thereon shall be final.

*** § 169. Laborers, number and wages.** The board of water commissioners may fix the number of laborers to be employed by the superintendent

* As amended by Chap. 326, Laws of 1916.

of water works in the performance of labor in connection with the city water works, and shall determine the wages to be paid to them. Such board shall not create any salaried office and make any appointment thereto, except as expressly authorized by this act.

§ 170. General powers and duties of the board of water commissioners. The board of water commissioners shall:

1. Take possession of the water-works of said city and keep the same and all property connected therewith or belonging thereto in good order and repair, and take all proper measures to preserve the purity of the water and a sufficient supply thereof for family and fire purposes and for such other purposes as in its judgment and discretion it may be used or applied."

2. Extend the pipes of said works into and through any of the streets, and other public places of the city.

3. Establish a scale of rents, from time to time, to be charged and paid to said city for the supply of water by the owners or occupants of all buildings or lots in said city, or by any persons using said water for any purpose, either in advance or at such time or times as they shall prescribe, to be called "water rents," to be apportioned to the different classes of buildings in said city as hereinafter provided, and alter or amend such scale by increasing or diminishing such rents.

4. Make, amend or repeal such rules and regulations for the preservation, protection and care of the water-works, and for the use and control of the water as they may deem advisable, and prescribe penalties, for the violation thereof; such rules and regulations, when certified to the common council, shall be duly published by them, at the expense of the board of water commissioners, and shall have the same force and effect as an ordinance enacted by the common council.

5. See that all rules and regulations so made and published are duly observed and enforced, and prosecute in the name of the city all persons violating the same for any penalty, fine or forfeiture incurred thereby.

6. Keep a record of their proceedings in a suitable book and also a record and account with each person furnished with water or with whom they have dealings.

§ 171. Annual report of board. The board of water commissioners shall make and file with the city clerk, within thirty days after the commencement of each official year, a report of the proceedings for the preceding fiscal year containing an itemized or detailed statement of all moneys received and disbursed by the chamberlain of said city for or on account of said water works, by their order or under their direction, stating the persons from whom such amount was received or to whom it was paid, and the purpose for which it was received or paid. Said report shall also each year contain a full statement of the bonded and other indebtedness of said city incurred by it, or by the village of Johns-

town, for the construction, maintenance or extension of the water-works, with the date when such debts were incurred and the times when the same shall become due; also the amount, nature and other particulars concerning any surplus or sinking fund created or provided for the payment of said debts. For the purpose of making the above report the board of water commissioners may call upon the chamberlain for a like report for the preceding fiscal year, and it shall be the duty of the chamberlain to transmit such a report to the board on or before the fifteenth day of January in each year. The common council shall publish as a part of its annual report the statement of debts and surplus together with a summary statement of the receipts and disbursements, as shown by the report of said board of water commissioners. The annual report of said water commissioners shall be printed each year in pamphlet form on or before the fifteenth day of February, the printing of such pamphlet to be awarded to the lowest bidder.

§ 172. **Books and papers open to public inspection; evidence.** All books and papers of every kind and description kept by said board of water commissioners, upon which are entries of their transactions as such, shall at all times when not in use, be subject to the inspection of the mayor and common council and every elector of said city. The records of said board, or a transcript thereof certified by the president and clerk shall be received in all courts and places as prima facie evidence of the facts therein stated.

§ 173. **Apportionment of water rents.** The water rents shall be apportioned to the different classes of buildings in reference to their dimensions, values, exposure to fires, ordinary and extraordinary uses for dwellings, stores, shops, hotels, factories, livery or private stables, barns and all other establishments, trades, and other common purposes, number of families, or occupants, or consumption of water as near as may be practicable, and in reference to the yards, grounds or places where said water is to be used for any purpose. The city buildings and the school buildings of said city shall be furnished with water in a suitable manner free of charge. The water commissioners and their employes may enter at all times any building or place where water is used from supply pipes or having pipes connected with said water-works to observe whether the water is being used therein, and if so, to examine as to the water, quantity used, and the manner of using it. Hotels, factories, stables and all other buildings, establishments and places which consume extra quantities of water shall pay such sums or rates as the board shall direct and at the time and in the manner directed by it.

* § 174. **Collection of water rents.** The board of water commissioners

* As amended by Chap. 42, Laws of 1907.

shall, on or before the first days of May and November in each year, furnish the chamberlain a list or roll containing the name of each person, company, corporation or association, indebted to said city for water rents or other charges due or to become due for the use of or in connection with the supply of water on said first days of May and November, with the amount due or to become due on the dates named from each person or corporation set down in a separate column opposite the name of each, and directing him to receive and collect the same from the persons or corporations therein named within thirty days from the receipt by him of said roll. The chamberlain shall immediately upon the receipt of said roll give notice in the official papers of said city of the receipt thereof and that such rents and charges will be received by him at his office for thirty days thereafter. If the chamberlain shall fail to collect any such water rents or charges, he shall make return thereof to said board under oath, and thereafter said board may sue for and collect such rents and charges, together with interest and costs from the persons or corporations liable therefor. Immediately upon such return being made the board may cut off the supply of water leading to the premises where the water was used for which such rents or charges remain unpaid, and prevent the further use of water therein or thereon, until such rents or charges, interest and costs are paid, together with any charge which said board may fix for shutting off said water as aforesaid, and for turning on the water again for use on or in said premises. Whenever any water supply is cut off because of the non-payment of such rents and charges, the superintendent of water works shall file with the clerk of said board a statement of the amount of such rents or charges due and unpaid, together with any charge, fine or penalty fixed as aforesaid for shutting off and turning on said water and the clerk shall certify said amount to the chamberlain and, upon production of the receipt of the chamberlain for that amount, the clerk shall be authorized to issue a permit for the turning on of said water for the use of the person paying the same.

§ 175. **Liens for water rents, fines and penalties.** All expense, charges, fees, water rents, fines, forfeitures or penalties which may accrue from or be imposed upon such owners or occupants for use of water or for any other purpose in connection with the supply of water, shall be a lien for ten years on the real property upon which such water shall have been used, or in respect to the occupants of which such fines or penalties may have been imposed or forfeitures incurred; and may be assessed, collected and the collection thereof enforced in the same manner and by the same method, and with like proceedings, by said board of water commissioners, as in this act provided for the collection of taxes and assessments for state, county and city purposes.

§ 176. **Application of income from water-works.** The entire annual receipts or income from the water-works from all sources shall be used

and applied for the following purposes and in the order specified, namely:

1. To pay the salaries of officers and assistants, the expenses of all repairs and other necessary expenses connected with the proper management of the water-works.

2. To pay each year the interest on the bonds heretofore issued for the construction of said water-works, and the additions thereto and extensions thereof, by the city or village of Johnstown for like purposes.

3. To establish a sinking fund for the purchase and payment of said bonds; and for that purpose, after the foregoing provisions of this section have been complied with, all of the remaining income to the amount of five thousand dollars shall be set apart each year until sufficient moneys have been so set apart to provide for the payment of said bonds.

4. To pay for the extension of street water mains.

In case there shall in any year be a deficiency to carry out the foregoing purposes which can not be provided for as hereinafter provided, the common council of said city, in addition to the sums it is hereinbefore authorized to raise, shall cause to be levied upon and collected from the taxable property in said city such sum as shall be necessary to make good such deficiency. Any surplus which may accumulate in any year from the income of the water-works, over and above the amount set apart for the sinking fund by the board of water commissioners, shall be judiciously invested by the chamberlain, under the direction and with the approval of the board of water commissioners, and shall be used to make good any deficiency which may occur in any year.

§ 177. The sinking fund for payment of water bonds. All moneys and securities constituting or belonging to the sinking fund heretofore established by the board of water commissioners of the village of Johnstown, and all additions made thereto under and in accordance with the provisions of this act, together with all accumulations of interest thereon, shall be kept as a separate fund by the chamberlain, to be known and designated as the sinking fund for the payment of the water bonds. The moneys so set apart for said sinking fund each year, together with all accumulations of interest from investments previously made, shall be invested each year by the chamberlain, under the direction and with the approval of the board of water commissioners made in writing and filed in the office of the city clerk, in interest bearing bonds, or in first mortgage, accompanied by bond and insurance, upon real property located within the county of Fulton, actually worth at a fair market valuation double the amount of the mortgage. Whenever the sinking fund or any part thereof shall be invested in any bond and mortgage, such bond and mortgage and the insurance accompanying the same, shall be in the name of and payable to the board of water commissioners of the city of Johnstown, their successors in office or assigns. No part of said sinking fund, or of the interest thereon, shall be loaned upon a

mortgage on property owned by any water commissioner, or by any person related to any water commissioner of said city, by consanguinity or affinity within the third degree, to be determined in the same manner as in the case of a judge. The board of water commissioners may authorize the chamberlain to purchase, at any time when he shall have funds available in said sinking fund, any bonds issued for the construction of the water-works or on account of such water works as provided in this article, at prices not exceeding their par value, and when so purchased said bonds shall not be reissued, but shall be canceled and destroyed in the presence of the board of water commissioners. In such cases, and whenever any such bonds shall have matured and been paid and shall have been canceled and destroyed in the same manner, a full record of the number and denomination of each such bond so canceled and destroyed shall be made and a certificate filed with the city clerk, who shall note the cancellation and date of the same upon the register of municipal bonds kept in his office.

§ 178. **Right to use certain streets and highways.** The board and all acting under its authority may use the ground or soil under any street, highway or roads within the county of Fulton or any adjoining county, for the purpose of introducing water into and through any portion of said city, on condition that they shall cause the surface of such street, highway or road to be relaid or restored to its usual state, and all damages done thereto to be repaired. Such right shall be continuous for the purpose of repairing and relaying water pipes upon like conditions.

§ 179. **Sale of water outside of city limits.** The said board may contract with and sell to any person or corporation without the limits of said city, the right to make connection with the distribution pipes of said city for the purpose of drawing water therefrom, at such prices and on such conditions, as in the judgment of said commissioners shall be for the best interests of said city. But no such right shall be granted or in any way enforced, when, by so doing, the supply for the wants or necessities of said city shall thereby be curtailed.

§ 180. **Contracts.** The board of water commissioners may make all necessary contracts for the construction of the water works, or any portion thereof, and for any work pertaining thereto, and for labor and materials to be used in connection therewith. Such contracts shall be in writing, signed by a majority of the commissioners, and executed by the parties in triplicate, all of which shall be numbered by the same number. One of such triplicates shall be given to the contractor, one shall be filed in the office of the city clerk and one shall be retained by the commissioners. Three weeks' public notice shall be given in the official newspapers published in said city, of the times and places at which sealed proposals will be received for entering into contracts, and the commissioners shall have full discretion as to the acceptance or rejection

of all sealed proposals. If any portion of such works, and any work pertaining thereto, or any materials and labor to be used therefor, shall then remain uncontracted for, the like notice for sealed proposals and like proceedings may be had as above provided. Every person who shall enter into any contract for the supply of materials, or the performance of any work, shall give satisfactory security to such board for the faithful performance of his contract according to its terms. The board, without advertising for bids, may employ labor and buy material in open market for store-houses, shops and water mains, or for distributing pipes and cut-offs connecting the mains with the service supply pipes to buildings and yards, or for valves, gates, hydrants and hydrant pipes, or for repairs to the water-works or for tools, implements and supplies needed to make such additions and repairs.

§ 181. **Expense of supply pipes.** The connecting or supply pipes leading from private lands or buildings to the street mains shall be placed, inserted and kept in repair at the expense of the owners or occupants of the premises, and shall not be inserted or connected with the street mains until a permit therefor in writing shall be obtained from the clerk, or such other person as may be designated by the board of water commissioners, and the charges therefor paid to the chamberlain; and all such connecting or supply pipes and fixtures shall be constructed under or according to the direction of said board or of such person as may be designated by it.

§ 182. **Audit of claims; payment.** All claims and accounts against the board of water commissioners shall be presented to said board and audited and allowed by them. The board may prescribe the form of affidavit to be sworn to and annexed to such claims. The accounts and claims so audited shall be paid by the chamberlain on the warrant of the president of the board countersigned by the clerk, specifying the amount so audited and the fund from which it is payable. The clerk shall keep a record of every such warrant. All funds of the board of water commissioners shall be disbursed upon similar warrants of the board.

* § 183. **Control of property purchased for use of the water works.** All lands and rights or easements therein heretofore purchased or acquired by the village of Johnstown, or by the city of Johnstown, or that may be hereafter purchased or acquired by the city of Johnstown, for the use of the water works, for pipe lines, water sheds, or other purposes, shall be under the exclusive control and management of the board of water commissioners of said city, and the same or any part or portion thereof shall not be sold, leased, cultivated, mowed, pastured, or used for any purpose other than for the use and benefit of the water works of said city.

* As amended by Chap. 325, Laws of 1909, and Chap. 326, Laws of 1916.

No trees shall be cut upon any of said lands except such as are dead or so injured by fire or other action of the elements that good forestry requires their removal and except that matured trees over twelve inches in diameter two feet from the ground may be cut and sold by resolution of the board of water commissioners. Any officer of the city or other person who shall violate any of the foregoing provisions of this section shall be guilty of a misdemeanor. The board of water commissioners shall also have exclusive control of all the personal property belonging to or connected with said water works. The said board of water commissioners shall have monuments erected to designate the boundaries of all lands belonging to said city and used for purposes connected with said water works and shall have authority to cause fences to be erected around the several reservoirs connected with said works.

§ 184. **Annual settlement of board with chamberlain.** The board of water commissioners shall annually in the month of December in each year examine the accounts of the city chamberlain with reference to the water funds and the sinking fund, and if found correct, shall so certify and shall report the result of their examination to the common council. At the expiration of the term of office of any chamberlain, or immediately prior thereto, the said board shall settle and adjust the accounts of said department with the chamberlain and report to the common council the funds and securities in the hands of said chamberlain, belonging to or owing to the water fund and the sinking fund for the payment of the water bonds, and which should be delivered by said chamberlain to his successor in office.

* § 185. **Powers of water commissioners in procuring additional supply, et cetera.** The board of water commissioners shall from time to time examine into and adopt such plans as in their opinion may be most feasible for procuring additional supplies of water for use in said city, and such additional lands, forming a part of the water shed of streams now or hereafter supplying said city with water, as in their opinion may be necessary to the preservation of the purity of the water supply, and for that purpose may in the name of the city, contract for and acquire by purchase or condemnation under the provisions of the condemnation law, all lands, streams, water, water rights or other property, real or personal, or rights therein, situate at any place within the county of Fulton or any adjoining county, which may be required for that purpose, and also the right to lay, relay and maintain pipes through the lands, and to take, detain or divert water or streams of water which may be required for the purpose, with or without taking the fee of the land through which the pipes are laid or over which said streams or water flow. They may also contract for the execution of the work or any part thereof, or the

* As amended by Chap. 325, Laws of 1909.

supply of any necessary material. The commissioners and their servants and agents may enter upon any lands, streams or water for the purpose of making surveys. They may agree with the owner of any such property or right which may be deemed necessary for the purposes of this act, as to the amount of compensation to be paid such owner. Before detaining, taking, diverting or using any such lands, streams or water or rights therein, or commencing proceedings for the condemnation thereof, the water commissioners shall cause a survey and map to be made of the lands, water or streams intended to be taken, diverted or affected, or in which a right is intended to be taken for any said purposes, on which map the lands, streams or water of each owner or occupant shall be designated. Such map shall be signed by the president and clerk of the board and be filed in the office of the county clerk of the county or counties in which said lands, streams or water are situated. The board shall also in all cases, by an order made by them and signed by said president and clerk, to be attached to and filed with said map, describe the lands, streams or water, and the title and interest therein, which they intend to acquire. Any such map or order may be amended in the discretion of the board at any time before the appointment of commissioners of appraisal, by filing in said county clerk's office a new map and order conforming in all respects to the requirements of this section, together with a notice signed by the president and clerk of said board of water commissioners, that the said map and order then on file have been amended. Thereupon the said new map and order shall have the force and effect of the map and order so amended, which shall be deemed withdrawn except so far as they relate to proceedings and acts already had and done.

*** § 186. Loan for additional water supply or lands, and issue of bonds therefor.** The board of water commissioners shall borrow, from time to time, upon the credit of the city, such sums as may be necessary to procure such additional supply of water for said city, or such additional land as may be necessary to the preservation of the purity of the water supplied thereto, and may issue bonds therefor. The aggregate of said sums and the outstanding indebtedness of said city, incurred by said city, and the village of Johnstown for the construction of the water works of said city shall, at no time, exceed ten per centum of the assessed value of the real estate of said city as shall appear by the then last assessment-roll, except as hereinafter provided. Such bonds shall be issued and sold as are other city bonds and obligations and shall be signed by the president and clerk of the board and countersigned by the chamberlain. Such bonds and interest thereon, shall be a valid liability against the city, and the credit of the city is pledged for the payment of the same. The money so borrowed and the proceeds of bonds issued and sold as provided herein,

* As amended by Chap. 325, Laws of 1909.

shall be appropriated by said commissioners to the purposes herein specified.

§ 187. **Proceedings for incurring indebtedness exceeding limit.** Whenever the board of water commissioners may deem it expedient for said city to incur an indebtedness over and above the said ten per centum of the assessed valuation for the construction of water-works for said city, they shall, before entering upon such construction, or the incurring of said indebtedness, specify by resolution the nature and extent of the work contemplated, and the amount of money required for the same, together with a general description of the land, stream or water or rights therein to be taken therefor. They may then call a special election in said city, which shall be called, held and conducted in the same manner as provided in this act for special elections called by the common council. When such election is not held at the same time and with an election called by the common council, the board of water commissioners shall possess the powers and perform the duties of the common council as prescribed by section seventy-three of this act, and shall canvass the votes cast thereat in the same manner as the votes cast at a special city election are canvassed by the common council. The provisions of such section seventy-three relating to notices, and forms of ballots and propositions shall be complied with so far as practicable by the board of water commissioners in submitting a proposition for the incurring of such additional indebtedness. In case a majority of the votes cast be in favor of said proposition, the board of water commissioners shall upon the faith and credit of said city issue bonds in accordance therewith. Such bonds shall be issued and sold as are other city bonds and obligations, and shall be signed by the president of the board and countersigned by the chamberlain.

§ 188. **Question of additional water supply to be submitted to a vote of the people.** (Repealed by Chap. 325, Laws of 1909.)

ARTICLE VIII.

POLICE DEPARTMENT.

- Section 190. Police department, how constituted; rules and regulations.
- 191. Appointment of members; special policemen.
 - 192. Powers and duties of members of police department.
 - 193. Fees for services; traveling expenses.
 - 194. Powers and duties of chief of police.
 - 195. Assistant chief of police.
 - 196. Fees chargeable to Fulton county.

* § 190. **Police department, how constituted; rules and regulations.** The police department shall consist of the chief of police and such number of uniformed policemen, as shall be fixed by the common council at their first meeting in each year, who shall constitute the regular police force, and such special policemen as may be appointed under the provisions of this article. The police department shall be under the general control and management of the mayor and common council, who shall adopt and enforce rules and regulations, consistent with law, for the administration of the affairs of such department, and for the government of its members. A sufficient number of such rules and regulations shall be printed for the use of the department.

§ 191. **Appointment of members; special policemen. The mayor shall appoint the chief of police. The mayor shall appoint the uniformed policemen subject to confirmation by the common council. The mayor may, whenever in his judgment the public interest shall require, appoint not more than ten special policemen to hold office for a period fixed by the mayor, not exceeding five days under any one appointment. Such special policemen shall wear such uniforms and badges as the mayor may direct. They shall be paid out of the contingent fund a compensation to be fixed by the mayor not exceeding the rate allowed to the uniformed policemen for the same period of time. The mayor may also appoint special policemen upon the request of any person or corporation in the city, who shall serve without pay from the city, but shall be under the control of the mayor and chief of police, and may be removed by the mayor at pleasure.

§ 192. **Powers and duties of members of police department.** The members of the police department shall possess in criminal cases and proceedings and special proceedings of a criminal nature all the common law and statutory powers of policemen and constables, and shall have the exclusive power of serving all criminal warrants, or other criminal process issued by the recorder, acting recorder, mayor, common council, or a committee of the common council in any part of the state, without any indorsement of such warrant. It shall be their duty and they shall have the power to serve and execute civil processes as provided in section two hundred and eighty-four of this act. Such policemen shall have power and authority to arrest with or without warrant any person or persons found violating, within said city any penal ordinance or law of said city, and any person or persons found by said policemen in said city begging from house to house, or applying to any of the officers of said city for food or lodging, and who are designated and commonly known as tramps or vagrants, or any other disorderly person found by such policemen engaged in disorderly conduct in said city, and to bring

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 326, Laws of 1916.

them before the recorder, or acting recorder, to be dealt with the same as if said person or persons so arrested had been arrested upon warrant therefor duly issued by such recorder or acting recorder. Each policeman of the city shall have the same power and authority for the collection of taxes within the city as a constable of a town has for the collection of taxes in a town, as well as that conferred by this act, and shall be subject to the same liabilities with reference thereto.

*** § 193. Compensation; fees for services; travelling expenses.** The annual salary of the chief of police and of each of the regular uniformed policemen shall be fixed by the common council by the affirmative vote of two-thirds of all the members thereof, and shall be payable from the police fund in monthly installments. No policeman shall receive for his own use any fees for services performed by him in pursuance of this act other than the salary fixed by the provisions of this chapter or by the common council in pursuance thereof, nor shall any policeman receive any present or reward for services rendered or to be rendered in pursuance of this act, unless with the approval of the mayor or common council. But each of said policemen shall receive in addition to such compensation his actual travelling expenses in all cases in which he shall have travelled more than one mile outside of the city limits to perform such services, which travelling expenses shall be audited and paid out of the contingent fund of said city, as other charges against said city are audited and paid. In each case arising under this act or any other law, or under an ordinance or rule or regulation adopted as provided in this act, in which the city shall recover judgment, the same fees for the service of such policemen shall be included in such judgment as constables would be entitled to for like services, and when paid or collected, shall be paid to the chamberlain within five days after the receipt thereof, to the credit of the contingent fund.

§ 194. Powers and duties of chief of police. The chief of police shall:

1. Subject to the authority of the mayor and common council, be the chief executive officer of the police department and superintend the same;

2. Record all cases and legal proceedings in his department and all services performed by him and by the several policemen in a book to be provided for that purpose;

3. Enter all articles taken from persons arrested or seized on a warrant or otherwise, together with the disposal made thereof, in a book to be known as the property book;

4. At least once a month, and oftener if required, report to the common council the state of the department and whether the members of

* As amended by Chap. 661, Laws of 1910.

the department are delinquent in their duties, and account for all fees received for services performed by the members of the department.

§ 195. **Assistant chief of police.** The mayor may designate one of the members of the regular police force as assistant chief of police, to act, in case of the absence or inability of the chief to act, in the place of the said chief, and such assistant chief shall possess the powers and perform the duties of the chief of police while acting as such, together with such other duties incident to his office as may be imposed upon him by the mayor or common council.

§ 196. **Fees chargeable to Fulton county.** The chief of police shall keep a record of all fees for services performed by the members of the department which are by law chargeable to the county of Fulton, and shall annually make out an account thereof, duly verified by him, and shall annually present the same to the city clerk before the time for the presentation of claims against the county of Fulton, and such city clerk shall present such account to the board of supervisors of such county, which board shall audit and levy the same as other county charges are audited and levied, and the amounts thereof shall be paid to the chamberlain and be credited by him to the contingent fund.

ARTICLE IX.

FIRE DEPARTMENT; FIRE LIMITS.

Section 200. The fire department.

201. General powers of common council in relation to fire department.
202. Appointment of firemen.
203. Chief engineer.
204. Assistant engineers.
205. Secretary; treasurer; their powers and duties.
206. Fire wardens; their powers and duties.
207. Rules and regulations of fire department.
208. Suspension of officers or members; penalties for misconduct.
209. The firemen and their duties.
210. Exemption from taxes and jury duty.
211. Ownership and control of personal property.
212. Treasurer of fire companies.
213. Fire limits.

Section 200. **The fire department.** The fire department of the city of Johnstown as constituted at the time this act takes effect is continued

and shall consist of a chief engineer, who shall be appointed in the month of January by the mayor and confirmed by the common council and whose term of office shall be two years; a first assistant engineer and a second assistant engineer who shall be appointed each year in the month of January by the mayor and confirmed by the common council; and so many permanent firemen as the common council may deem necessary, not exceeding one hundred in number, who shall be resident electors of said city. It shall continue to be a volunteer department, except such members thereof as it may be necessary from time to time to employ and pay as drivers or to take charge of the fire-alarm telegraph. All expenditures for the department shall be made from the fire fund.

§ 201. **General powers of common council in relation to fire department.** The common council shall have power:

1. To establish and maintain an efficient fire department in and for said city;

2. To establish, promulgate and enforce proper rules, regulations and orders for the good government and discipline of said department, and cause a suitable number of copies thereof to be printed for the use of the department;

3. To purchase all necessary wagons, trucks, harnesses, horses, carts, hooks and ladders, hose, hose carriages, fire alarm telegraph and other apparatus for the discovery or extinguishment of fires, and to repair and improve the same by such implements, equipments and supplies as are required for use by such department, and to sell, exchange or transfer the same or any part thereof;

4. To provide buildings or houses for such horses, carts, hose carriages and other apparatus and purchase or lease premises for that purpose and arrange, rearrange or refit the same;

5. To organize new fire, hook and ladder, or hose companies whenever the interests of the city, in their judgment, require it, and to disband such companies as they may deem unnecessary or such as may prove refractory and unwilling to obey the lawful orders of the common council, mayor or chief engineer and other officers of the department;

6. To change to a paid department, in whole or in part; and whenever such change is made, the common council shall have the power to employ and pay such officers, firemen, drivers, hosemen, pipemen and helpers, and to make and incur such other and further expense as they may deem necessary for the proper and efficient management of the apparatus of that portion of the department which they shall declare to be paid;

7. To call out the whole of the department, or any part thereof, for improvement and inspection, as often as they deem it proper or necessary;

† 8. To compel owners and occupants of buildings in said city to provide fire extinguishers, fire buckets or pails, or other fire fighting apparatus and regulate the manner and place of keeping the same;

9. To do all things necessary to properly equip, manage, control and make efficient the said fire department.

§ 202. **Appointment of firemen.** The firemen shall be appointed, and vacancies filled in the different companies of the fire department of said city, by the common council, upon the nomination of the majority of the members of the company in which such appointment is to be made or vacancy filled. The common council are authorized to withhold and refuse such appointment, whenever in their judgment, for any cause, the person thus nominated ought not to be appointed. The warrant of* the appointment of such officers signed by the mayor, with the approval thereon of the common council, properly certified by the clerk, shall be filed with the clerk.

§ 203. **Chief engineer.** The chief engineer of the fire department, subject to the direction of the mayor and common council, shall:

1. Have the general control and management of all officers, men, property, measures and actions for the prevention or extinguishment of fires within the city, and may call upon the chief of police, or any member of the police force, to assist in the protection of property, the promotion of order and in the enforcement of all rules for the government of the department;

2. Make and keep an accurate inventory of all the property of the department and see that the same is kept in proper order and is not lost, wasted or destroyed, or used for any other than fire department purposes, except with his permission;

3. Be present at fires of buildings in said city, and take command of the several companies belonging to the department and the general control of the trucks, hooks and ladders, carts, hose and other apparatus for the extinguishment of fires;

4. Annually, in the month of December, make a report in writing to the common council, and oftener, whenever required by them, showing the actual condition of the property under his charge, a list of fires, alarms, losses and insurances on all property destroyed since the last report, a particular statement of the cause of such fires so far as known, and such other information as he may deem important to the public interest;

5. Perform such other duties as shall be given him in charge from time to time by the common council, and such duties as shall be prescribed in the ordinances, rules and regulations of the common council;

† As amended by Chap. 326, Laws of 1916.

* So in original.

6. Have power to call out the whole or any part of the department for improvement or inspection as often as he may deem proper or necessary.

§ 204. **Assistant engineers.** The first and second assistant engineers shall aid the chief engineer at all fires in said city and perform such duties as shall be assigned them by the chief engineer, the mayor or common council, and such duties as the ordinances, rules and regulations may prescribe. The first engineer shall have all the power and authority of the chief engineer in case of his absence or inability to act, and the second assistant engineer shall have all the power of the chief engineer in case of the absence or inability to act of the chief engineer and first assistant.

§ 205. **Secretary; treasurer; their powers and duties.** The chief engineer shall each year in the month of November call a meeting of the entire* membership of the fire department at the city building, at a stated time, for the election of a treasurer and secretary of the fire department for the ensuing year. A certificate of the election of such officers, signed by the chairman and secretary of such meeting, shall be delivered forthwith to the city clerk, who shall present the same to the common council. If the officers mentioned in the certificate are confirmed by the common council, the certificate endorsed with such confirmation of the common council shall be filed with the clerk and the persons therein named shall become the duly appointed officers of said department. If said persons are not confirmed by the common council the certificate shall be returned with their disapproval to the chief engineer and another election shall be held, names certified in the same manner as before until the persons elected by the department are confirmed or approved by the common council, when the certificate of appointment shall be endorsed and filed with the clerk with like effect as if the persons had been confirmed in the first instance. The secretary shall perform the usual duties of a secretary. The treasurer of the fire department shall before entering upon the duties of his office take the constitutional oath of office and file the same with the city clerk and shall also file with said clerk a bond in such a sum as the common council may direct and to be approved by them for the faithful performance of his duties as such treasurer. He shall collect, recover and receive all moneys belonging to or that may become due and payable to the fire department from all sources, and safely keep the same and pay the same over to the several companies composing the said department, as they shall be entitled to the same. He may in his name as such officer sue for and recover for the use of said department from all individuals and corporations in any court having jurisdiction all sums of money belonging

* So in original.

to or that shall become due and payable to or for said fire department from such individuals or corporations.

§ 206. **Fire ward-ns; their powers and duties.** The common council may, from time to time, appoint one or more fire wardens and prescribe and define their powers and duties. The mayor, aldermen, chief engineer of the fire department and policemen shall also be fire wardens of said city and possess all the powers of fire wardens under this act. The fire wardens shall have power at all reasonable times and it shall be their duty to enter into and examine all dwelling-houses, out-houses, lots and yards in said city, in the day-time; to inspect all places wherein fires are used; to ascertain how ashes are kept; to direct obedience to all orders of the common council relating to the prevention of fire; and to report to the common council all infractions thereof that are not forthwith amended.

§ 207. **Rules and regulations of fire department.** All rules and regulations pertaining to the government of the fire department of the village or the city of Johnstown in force at the time of the passage of this act shall be and continue in force within the city of Johnstown, as if duly adopted and published by the common council of the city, except as the common council shall amend or repeal the same.

§ 208. **Suspension of officers or members; penalties for misconduct.** The chief engineer shall have power to immediately suspend any officer or member of the fire department, while they shall be on duty at fires or otherwise, for disobedience of orders, incapacity, intoxication, disorderly conduct, insubordination or neglect of duty; but, in case he shall thus suspend any officer or member of the fire department, he shall report the facts in writing to the mayor forthwith, who shall lay the same before the common council at their next regular meeting, and the common council shall thereupon at such meeting, or at such other time as they may appoint, proceed to hear and determine the matter, and shall either restore such officer or member, or remove, suspend, censure, reprimand or punish him, as hereinafter provided. Any officer or member of the fire department may be removed, suspended, expelled, censured, or reprimanded by the common council for incapacity, neglect of duty, disobedience of orders, intemperance, insubordination or other misconduct tending to destroy the efficiency or discipline of the department, after giving him five days' notice to show cause why he should not be so removed, expelled, censured or reprimanded, and an opportunity to be heard in his defense, and in the meantime he may be suspended without notice; and the said common council shall have power to provide for the punishment of any member of the fire department for disorderly conduct, disobedience of orders or insubordination by fines not exceeding fifty dollars, to be sued for and recovered in the name of the city and paid into the treasury of the city for the benefit of the fire department of the city, or by imprisonment not exceeding twenty days, or by both

fine and imprisonment. The recovery of any penalty or fine, under the provisions of this act relating to the fire department, shall not prevent the exercise or carrying out of any of the powers conferred by this article, nor shall the exercise or carrying out of such powers be a bar to the recovery of any such penalty or fine.

§ 209. The firemen and their duties. It shall be the duty of the members of the fire department to turn out upon every alarm of fire and aid in the extinguishment thereof, and, whenever called upon by the mayor or any member of the common council, to aid in the suppression of all riots or riotous assemblages in said city, and they are hereby declared exempt from prosecution or indictment for any act done in the reasonable and proper discharge of their duties at such fires, riots, or riotous assemblages. The common council, the mayor, the recorder, or any member of the common council, engineer, or fire warden, may keep all idle or suspicious persons away from the vicinity of any fire in said city and may require the inhabitants of said city, or any bystander, to form ranks or lines to carry water for the extinguishment of any fires, and to aid the firemen in working their engines, hooks, ladders, hose and other apparatus, and to aid in recovering or protecting property thereat.

§ 210. Exemption from taxes and jury duty. Every member of the fire department in said city shall be holden to duty therein for the term of five years from his enlistment, unless disability shall incapacitate him for such service, or he shall be sooner discharged by the common council. Every member of such department, while he performs duty as such, shall be exempt from jury duty, and entitled to a deduction from the assessment of his real and personal property to the amount of fifteen hundred dollars in all classes of city taxes, except school taxes. Every such member who shall have faithfully served as fireman for the term of five years in the fire department of either the city or the village, or partly in each, shall thereafter be exempt from service on juries while he remains an inhabitant of said city, and the common council shall furnish to every member who shall have so served said period of five years a proper certificate, signed by the mayor, clerk, and chief engineer of the fire department, as evidence of such service. The foreman or other chief officer of any company shall furnish to any member thereof doing active service as fireman, whenever called upon, a proper certificate that such fireman is a member of such company engaged in active service. On or before the first day of December in each year the foreman of each fire company shall deliver to the chief engineer a list of the names of the members of the company of which he is foreman, who have done active and faithful fire service during the next preceding year, verified by his own affidavit. The chief engineer shall examine such lists, and if he approve of the same shall indorse his approval thereon; if he does not approve of any names thereon, he shall indorse thereon the reasons why,

in his judgment, such persons are not entitled to the tax exemption granted under this section, and shall transmit* said lists, so approved or modified, to the city clerk, who shall lay them before the common council. The common council shall review said lists and shall state thereupon the names of any members whom they shall deem, for proper causes, not justly entitled to said exemption, and said lists shall then be filed with the clerk, who shall thereupon make and deliver to the assessor of said city a certified copy thereof, and the assessor shall, upon the receipt of the same, make the deduction in the assessment of the property of each member of the fire department, whose name is so certified to him, provided in this section, if said deduction has not been theretofore made and note the exemption on said assessment-roll, but no person who is a paid fireman shall have the benefit of such deduction or exemption. The city clerk shall keep a record of all the active and exempt firemen in a book kept in his office for that purpose.

§ 211. **Ownership and control of personal property.** The legal title to all personal property heretofore vested in the city of Johnstown for fire department purposes and to all personal property which may hereafter come into the possession of any fire, hook and ladder, hose or other company belonging to and a part of the fire department in and for said city, by gift, bequest, purchase, or otherwise, shall be and hereby is vested in the city of Johnstown in trust, nevertheless, for the use and benefit of said company and its successors. No part of such property shall be sold, exchanged, loaned or transferred by the common council of said city, except upon the request of such company made by resolution adopted by the affirmative vote of a majority of all the members thereof.

§ 212. **Treasurers of fire companies.** The treasurer of each fire, hook and ladder, hose or other company belonging to and a part of the fire department of said city shall, before entering upon the duties of his office execute a bond to the common council, in such amount and with such sureties as the common council may prescribe, in accordance with section twenty of this act. No money shall be paid out by the treasurer of any such company, except upon a warrant stating for what purpose, signed by the secretary of such company and countersigned by the president or foreman. No money coming into the hands of the treasurer of any such company from the common council, or the fire department, or by gift, or for fines, or from any other source, shall be used by any such treasurer, or paid to any member of such company for his personal benefit. All money received by any such treasurer shall be used only for the benefit of said company and its successors as a company in the discharge of their duties as firemen, except as otherwise provided by general laws. Any violation of the provisions of this sec-

* So in original.

tion by the treasurer of any such company shall render him and his sureties personally liable for all damages sustained by reason thereof, and he shall, in addition, forfeit and pay for the use of the fire department of said city the sum of fifty dollars, which amount may be sued for and recovered in the name of the city and shall be paid to the treasurer of said fire department.

§ 213. **Fire limits.** Hereafter no wooden buildings of any description shall be built, constructed, enlarged or rebuilt in said city within the following boundaries, namely: Commencing at the southeast corner of West Main street and South Melcher street in said city and running thence south along the east line of South Melcher street two hundred and fifty feet; thence east on a line parallel with the south line of West Main and East Main streets, crossing South William, South Market and South Perry streets to a point in the lands formerly owned by James D. Miller two hundred and fifty-nine feet easterly from the east line of South Perry street; thence northerly on a line parallel with the east line of South Perry street two hundred and fifty feet to the south line of East Main street, and thence westerly along the south line of East Main and West Main streets to the place of beginning: Commencing at the northeast corner of West Main and North Melcher streets in said city and running thence along the east line of North Melcher street two hundred and sixty feet; thence east on a line parallel with the north line of West Main and East Main streets, crossing North William, North Market and North Perry streets, to a point in the east line of lands of Jacob Moltz, or a point two hundred and fifty-nine feet easterly from the east line of North Perry street; thence southerly along the east line of lands of said Moltz to the north line of East Main street, and thence westerly along the north line of East Main and West Main streets to the place of beginning, but all buildings which shall hereafter be constructed, enlarged or rebuilt within said limits shall be constructed of brick or stone, or some metallic* or incombustible substance, with partition walls, fireproof roof and brick, stone or metallic cornices and eaves troughs. The common council shall have full power to establish rules and regulations relative to the mode, manner of construction or materials to be used in the alteration or repair, or rebuilding in part in case of fire, of any building within the limits hereinbefore defined, and shall have discretionary power, upon application therefor, to modify or vary any of the rules or regulations made by them to meet the requirements of special cases, when the same do not conflict with the public safety and the public good, so that substantial justice may be done; but no such deviation shall be permitted unless a record of the same be kept by said

* So in original.

common council and a permit be issued to the party applying therefor. The common council may from time to time enlarge the territory to be included within the fire limits but shall not have power to contract the same.

ARTICLE X.

BOARD OF EDUCATION; SCHOOLS.

Section 220. City as school district.

- 221. The board of education; corporate powers.
- 222. Succession to property and obligations.
- 223. Annual election of school officers.
- 224. Annual meeting of the board of education.
- 225. Clerk of board of education.
- 226. Meetings of board of education.
- 227. Rules; quorum; voting.
- 228. Vacancies in board of education.
- 229. General powers and duties of the board of education.
- 230. Records of board as evidence.
- 231. Determination of amount of annual school tax-levy.
- 232. Fees and proceedings of chamberlain in collecting school taxes.
- 233. Chamberlain authorized to borrow moneys for current expenses.
- 234. School funds to be disbursed upon warrants of the board of education.
- 235. Annual settlement with chamberlain.
- 236. Special school elections.
- 237. Report of municipal bonds.
- 238. Annual report of the board of education.
- 239. Common council to pass necessary school ordinances.
- 240. Right to vote for school commissioner.
- 241. Fiscal and official school years.

* Sections 220 to 241 inclusive, Repealed by Chap. 786 Laws of 1917. (Education Law.)

ARTICLE XI.

BOARD OF HEALTH; CITY PHYSICIAN; CHARITIES.

Section 250. Meetings of board of health.

251. City physician and health officer.

252. Powers and duties of the commissioner of charities.

253. Expenditures for support of poor.

254. Monthly reports of commissioner.

§ 250. **Meetings of board of health.** The board of health shall hold its stated meetings in the common council rooms in the city building.

§ 251. **City physician and health officer.** The city physician shall, under the direction of the commissioner of charities, visit such of the poor of the city as may be ill, at their places of abode, and give them medical attention and care, and supply them or cause them to be supplied with such medicines as their condition may require. He shall be allowed for all medicines furnished by him to the poor of the city. All medicines furnished by other persons upon his order or the order of the commissioner of charities, shall be audited and paid from the poor fund of the city. The city physician shall be the health officer of the city and as such shall have the powers and perform the duties prescribed by law.

* § 252. **Powers and duties of the commissioner of charities.** Except as otherwise provided by this act, the commissioner of charities of the city of Johnstown, shall have and exercise within the city of Johnstown the same powers and discharge the same duties, to the exclusion of any other officer, as overseers of the poor in the several towns in Fulton county. The commissioner of charities shall have all the powers and authority of overseers of the poor of the several towns of this state in relation to the support and relief of indigent persons, the binding out of children, the care of habitual drunkards, the binding out and contract for the service of disorderly persons, and the same powers as overseers of the poor and county superintendents of the poor have in relation to the insane, the support of bastards and proceedings to charge the fathers and mothers of such bastards, and all such other powers as are conferred on overseers of the poor in the respective towns of this state, and shall be subject to the same duties, obligations and liabilities. He shall keep his office in some convenient part of the city, to be approved by the common council. He shall visit the poor of the city at their several places of abode and examine into their circumstances, and ascertain to what extent they are

* As amended by Chap. 326, Laws of 1916.

or may be in need and entitled to permanent or temporary relief. He shall require all persons making application for relief to make such application in writing, which shall be preserved by said commissioner, and at the end of each month all such applications made during the month shall be filed with the city clerk. He may administer oaths to and examine under oath any person applying to him for relief. For all purposes relating to the maintenance and support of the poor, the city of Johnstown shall be deemed one of the towns of Fulton county. The commissioner shall issue written orders for all means, provisions and supplies furnished to the poor of said city. He shall not employ any physician other than the city physician appointed by the common council, except where immediate surgical relief is required.

§ 253. **Expenditures for support of poor.** All the expenses for the support and relief of the poor persons of the city of Johnstown incurred under the provisions of this article, and all expenses properly chargeable under any other act against the city for the support and relief of poor persons shall be paid out of the poor fund, and no other expenditures shall be made therefrom except as otherwise provided in this act.

§ 254. **Monthly reports of commissioner.** Said commissioner shall at the first regular meeting of the common council in each month, report to the common council under oath in detail, all appropriations, expenditures, temporary relief and allowances made by him as such commissioner during the month preceding, which report shall specify the name and place of abode of each person relieved, the quality,* quantity and price per pound, or otherwise as the case may be, of each article ordered or furnished, and from whom obtained; said report shall also contain the names and places of abode of all persons to whom meals or lodgings have been furnished, the number of such meals and lodgings, from whom obtained, or by whom furnished, and the cost of the same. Said report shall be filed with the city clerk.

ARTICLE XII.

THE RECORDER; GENERAL POWERS, INCLUDING CRIMINAL JURISDICTION.

Section 260. Recorder to attend at office.

261. Acting recorder.

262. Removal of recorded.†

263. Form and service of processes and mandates; docket.

264. Criminal jurisdiction and powers of recorder.

* So in original. † So in original.

- 265. Courts of special sessions.
- 266. Actions under ordinances.
- 267. Proceedings to annul or suspend licenses.
- 268. Fees, fines and penalties to be paid to city.
- 269. Vagrants and disorderly persons.

* 260. **Recorder to attend at office.** The recorder shall attend at the office provided by the common council at certain hours of each day, to be designated by him, except Sundays and legal holidays, to hear such matters, issue such processes and institute such proceedings as the administration of justice requires, in accordance with the powers and jurisdiction herein conferred upon him.

§ 261. **Acting recorder. In case of the annual vacation, inability of the recorder to act by reason of absence from the city, sickness or other cause, or in case of his legal disability to act, or in case of a vacancy occurring in his office, and as long as such inability or disability exists, and until such vacancy be filled, the powers, jurisdiction and duties civil and criminal in this act conferred and imposed upon the recorder are hereby conferred and imposed upon the acting recorder. In the month of January, of each year, the common council shall designate an attorney-at-law of the city of Johnstown having the qualifications prescribed for recorder by section fourteen of this act, who shall be acting recorder of the city of Johnstown for the official year in which he is appointed. In case any warrant issued by the recorder shall be returned during his absence from the city or during his inability or disability to attend to the duties of his office, any further proceedings may be had on such warrant before the acting recorder, who, after having once obtained jurisdiction in any criminal action or proceeding, or special proceeding of a criminal nature, by virtue of the provisions of this act, may retain such jurisdiction and proceed to the determination of such action or proceeding. A civil action or special proceeding pending before the recorder, trial of which has not been commenced, may be continued during the vacation, inability or disability of the recorder, to judgment or final order or other determination thereof before the acting recorder, and execution or other process for the enforcement of such judgment or order, or a transcript of such judgment, may be issued by the acting recorder with the same force and effect as like process or transcript issued by the recorder in an action or proceeding brought before him. A civil action or special proceeding pending before the acting recorder, trial of which has not been commenced, may be continued to judgment or final order or other determination thereof before

* As amended by Chap. 326, Laws of 1916.

** As amended by Chap. 326, Laws of 1916.

the recorder. A civil action or special proceeding pending before the acting recorder, trial of which has been commenced, may be continued to judgment or final order or other determination thereof before the acting recorder, and execution or other process for the enforcement of such judgment of order, or a transcript of such judgment, may be issued by the acting recorder with the same force and effect as like process or transcript issued by the recorder in an action or preceeding brought before him. While serving as recorder the acting recorder shall receive compensation at the same rate as the recorder's salary. The recorder and acting recorder shall each report to the common council at the first regular meeting thereof in each month, the time, if any, during which the recorder shall have failed in the preceding month to attend to the duties of his office, and the time, if any, during which the acting recorder shall have acted in the place of the recorder in such preceding month. The recorder shall not be paid for such time as he fails to perform the duties of his office except during his annual vacation. A ratable proportion shall be deducted from his salary because of any such failure to perform his duties, and such deduction to be determined by the common council shall be paid by the chamberlain to the acting recorder.

§ 262. **Removal of recorder.** The recorder may be removed for cause after due notice and an opportunity of being heard, by the appellate division of the third department of the supreme court.

§ 263. **Form and service of processes and mandates; docket.** All processes, mandates, orders, commitments or other documents made or issued by the recorder, shall be signed, in addition to his name, "Recorder of the City of Johnstown;" when made or issued by the acting recorder, the same shall be signed, in addition to his name, "Acting Recorder of the City of Johnstown." All processes and mandates issued by the recorder or acting recorder requiring service, except such as are issued by the city court, shall be served by the city policemen, or by officers authorized by the laws of this State to serve such processes and mandates, and the same may be served in any county of this State without being endorsed by any other magistrate. The recorder and acting recorder shall keep a docket of all business done by them, with full items and dates, and with a proper and convenient index. Such docket shall contain a record or brief statement of all convictions, acquittals and judgments before either of them, and the same shall be open during office hours to public inspection when not in use.

* § 264 **Criminal jurisdiction and powers of recorder.** The recorder of said city in all criminal actions and special proceedings of a criminal nature for or on account of offenses committed or charged to have been committed within said city, shall have all the jurisdiction and authority

* As amended by Chap. 326, Laws of 1916.

which a justice of the peace of any town would have if such offense were committed or charged to have been committed in such town, including bastardy proceedings, in which latter proceedings it shall not be necessary for the recorder to associate with himself another magistrate. The said recorder shall have power to let to bail all persons charged with crime before him in all cases of felony where imprisonment in the state prison on conviction of such felony, can not exceed five years. The said recorder shall have jurisdiction and authority to hear, try and determine summarily and without a jury all charges and complaints against persons for disorderly conduct in said city, as defined by this act, or of such conduct in said city as constitutes such persons tramps, vagrants or disorderly persons, as defined either by this act or by the statutes of this state. Whenever any person shall be brought before said recorder, either with or without warrant, charged with being such tramp, if said recorder is satisfied, by the confession of such person, or by competent evidence upon such summary trial, that such person is such tramp, the recorder shall thereupon have jurisdiction and authority to render judgment convicting such person thereof, and imposing such sentence therefor as is provided by section twenty-three hundred and seventy of the penal law for such offense. Whenever any person is brought before such recorder, either with or without warrant, charged with such disorderly conduct, or with being such vagrant or such disorderly person, if said recorder shall be satisfied, by confession of such person, or by competent evidence upon such summary trial that such person has been guilty of such disorderly conduct, or is such vagrant or disorderly person, the said recorder may thereupon take such further proceedings thereon as a magistrate is authorized by the code of criminal procedure to take in such case; or, the said recorder may, instead, render judgment convicting such person of disorderly conduct, or of being a vagrant or disorderly person, as the case may be, and adjudging that he pay a fine not exceeding fifty dollars or be imprisoned not exceeding six months, or both, as the case may require, which judgment shall be enforced in the same manner in all respects as judgments of courts of special sessions are enforced.

§ 265. **Courts of special sessions.** The said recorder is hereby empowered to hold courts of special sessions in said city. Subject to the power of removal provided for in sections fifty-seven and fifty-eight of the code of criminal procedure, courts of special sessions held by said recorder shall have, in the first instance, exclusive jurisdiction to hear, try and determine all charges of misdemeanors committed within said city, and also all charges of misdemeanors committed by violations of the charter of the city of Johnstown, or by violation of the ordinances or regulations promulgated pursuant to this act. Courts of special sessions held by said recorder shall also (subject to the power of removal provided by sections fifty-seven and fifty-eight of the code of criminal

procedure) have jurisdiction to hear, try and determine charges of misdemeanors, committed as follows: Committed partly within and partly without said city, or when the acts, omissions or effects thereof, which constitute or are requisite to the consummation of such misdemeanor, occur partly within and partly without said city; committed in this State, in or on board of any railway engine, train or car making a passage or trip on or over any railway in this State, or in respect to any portion of the lading or freightage of any such railway engine, train or car, in case such railway engine, train or car passes or has passed in the course of the same passage or trip through said city, or any part thereof, or when such passage or trip terminates in said city, or would terminate in said city if completed. When a person shall be convicted by a court of special sessions held by said recorder of any misdemeanor of which such court has jurisdiction, the court of special sessions held by said recorder may render such judgment, imposing such sentence therefor, as a county court might lawfully render and impose in case a conviction of such crime were had in a county court. Except as hereinbefore provided, courts of special sessions held by said recorder shall have all the powers and jurisdiction conferred upon courts of special sessions by the code of criminal procedure, and shall be subject to all the provisions of said code relating to courts of special sessions.

* § 266. **Actions under ordinances.** The said recorder, in addition to the jurisdiction and powers hereinbefore conferred, shall except as otherwise provided in section two hundred and eighty-three of this act, possess exclusive jurisdiction and authority for the issuing of process and for the trial and determination of all actions arising under the provisions of this chapter or the ordinances of said city, and for the enforcement and recovery of all forfeitures, fines, penalties, taxes, assessments or water rates imposed by such chapter and ordinances, and also in all actions for the enforcements of the rules and regulations of the board of health of said city to the amount of one thousand dollars. All such actions shall be commenced by summons, which may be made returnable forthwith, in the name of the city, upon the complaint of the city attorney, any police officer or health officer of said city. Upon the rendition of judgment against the defendant in any such action, execution may be issued thereon immediately, and shall require that if the officer to whom it is issued can not find goods or chattels of the defendant whereof judgment can be collected, that the defendant be imprisoned in the county jail of Fulton county for a term not exceeding thirty days. In any such action it shall be sufficient to state in the complaint the article and section or sections of the act or ordinance alleged to have been violated or under which the penalty, tax, assessment or water rate is claimed, the time of its passage

* As amended by Chap. 326, Laws of 1916.

and the amount of the penalty claimed. Any other facts may be given in evidence without being stated in the complaint. All expenses incurred in proceedings for the recovery of any fine, penalty, forfeiture, tax, assessment, or water rate, shall be defrayed by the city subject to the provisions of this act; and all such fines, penalties, forfeitures and costs, taxes, assessments and water rates, when collected, shall be paid to the chamberlain and credited to the police fund, except as herein otherwise provided.

§ 267. **Proceedings to annul or suspend licenses.** The recorder of the city may hear, in a summary way, any complaint for any violation of the laws of the State or of the ordinances of the common council, against any person to whom a license of any description may have been granted in pursuance of this act, and may compel the attendance of witnesses on the hearing of such complaint in the same manner as a justice of the peace in the trial of civil causes, and on such hearing may annul such license or suspend the same for any certain time. Every determination on such complaint shall be forthwith filed with the city clerk, who shall serve a certified copy thereof on the person holding the license affected by such determination, either personally or by leaving the same at his or her place of abode or business, and from the time of such service such license shall be deemed to be annulled or suspended according to the terms of such determination until the same shall be reversed by the mayor. At least twenty-four hours' notice of the time and place of hearing such complaint shall be served on the person complained of, and such person may appeal from the determination of the recorder within forty-eight hours after the same shall have been made to the mayor, by filing his appeal with the clerk and stating the grounds thereof, and said mayor shall have power to reverse or affirm the same, but such appeal shall not suspend or in any manner affect such determination until the decision of the mayor thereon.

§ 268. **Fees, fines and penalties to be paid to city.** Neither the recorder nor acting recorder shall receive for his own benefit any fee for services performed under this act, but they shall each demand and receive in all proceedings before them, for all services rendered by them as recorder and acting recorder, the same fees as are provided by law for justices of the peace of towns for like services, and all fees and charges which may be legally payable whenever any suit or proceeding before either of them shall be settled or dismissed by consent, including constables' fees. All such costs and fees and fines and penalties, or other money collected by either of them during any month, shall be paid to the chamberlain before the next regular meeting of the common council in the next succeeding month; and any failure or omission to pay over such fine, penalty or other moneys shall be sufficient cause for removal of such recorder or acting recorder from office; the recorder

and acting recorder shall each file with the city clerk, prior to the time of the first regular meeting of the common council in each month a complete and detailed statement, verified by his oath to be true, of all moneys payable to the city chamberlain by virtue of the provisions of this act which were received by said recorder or acting recorder during the next preceding month, with the written receipt of said chamberlain of the payment of said moneys to him attached to such statement; the recorder and acting recorder shall keep an account of all such fees and fines and of all criminal business done by him, which shall be a county charge, and shall annually, at the time of the presentation of claims against the county of Fulton, file in the office of the city clerk said account, properly made and verified, and the clerk shall present the same to the board of supervisors of said county, and said board shall audit the said account to the city of Johnstown, and issue their check or order therefor payable to the city chamberlain of said city, and levy the amount thereof in the same manner as other county charges.

§ 269. **Vagrants and disorderly persons.** In addition to the persons mentioned and described in section eight hundred and eighty-seven of the code of criminal procedure, all habitual drunkards in said city shall be deemed vagrants. In addition to the persons mentioned and described in section eight hundred and ninety-nine of the code of criminal procedure, the following persons within the city of Johnstown shall be deemed disorderly persons, and may be proceeded against and punished according to the provisions of this act:—

1. Any person who shall be intoxicated in said city under such circumstances as to amount to a disturbance of the public peace;

2. Any person who shall by firing any firearms or by noisy, tumultuous or riotous conduct, disturb the peace and quiet of said city;

3. Any person who shall willfully give, or assist in giving, a false alarm of fire;

4. Any person who shall use any vulgar, indecent or obscene language, or be guilty of any vulgar, indecent or obscene conduct in any public street or place in said city;

5. Any person who shall neglect or refuse to report cases of contagious or pestilential disease, in pursuance of the regulation of the board of health;

6. Any person who shall be guilty of immoderate driving, or of racing horses, on any of the streets of said city;

7. Any person who shall have incited or induced dogs to fight, in any street or public place of said city, the owner of any ferocious or vicious dog, who shall permit him to be at large unmuzzled, in any street or public place in said city;

8. Any person who shall use any threatening, abusive or insulting

language, or be guilty of threatening, abusive or insulting behavior, provoking or tending to provoke a breach of the peace in said city;

9. Any person who shall willfully remove, break, mar, injure, or deface any building, fence, awning, sign, signboard, window, gate or other private property of any person or corporation in said city or any property belonging to said city;

10. Any person who shall pile up before any door, or upon any sidewalk or street, boxes, casks, or other things for the purpose of annoyance or mischief in said city, or who shall willfully tear down, destroy, or mutilate, any notice or handbill, lawfully posted up in said city;

11. Any person who shall willfully and maliciously rub or throw any paint, ink, liquid, missile, or other substance, upon or against any fence, structure or building, or against or through any window or door of any building in said city;

12. Any person who at the time of any fire in said city shall interfere, or attempt to interfere, with the operation of the fire department, or of its members, agents, officers, or men, in their efforts to prevent or extinguish a fire, or shall interfere, or attempt to interfere with or prevent, or obstruct the execution of the orders of the proper officers of said fire department in the performance of their duties at such fire, or any member of the fire department who shall be guilty of insubordination, or willful disobedience of the lawful and proper orders of his superior officers in the discharge of their duties at such fire;

13. Any person who shall, with others, idly or improperly congregate upon the sidewalks or about the corners of the streets in said city, so as to hinder, delay or annoy persons using or passing along said streets or walks;

14. Any person who shall, alone or with others, not using the public ways of said city to pass and repass, lounge and loiter about, standing on or occupying the sidewalks or any public place in front of or along any premises or buildings, public or private, not owned or occupied by such persons, or shall be, without any right, in or about the approaches, passages, entrances, hall or stairway of any building used for public assemblages or public resort, to the annoyance or impediment of persons lawfully passing and repassing, or of property owners, and who shall refuse, after direction of any officer or citizen, to pass along or disperse from said place or places;

15. Any person who shall disturb or interrupt any public meeting, school, concert, theatre, or exhibition, or any assemblage, without lawful authority;

16. Any person who shall commit any nuisance in or around the fire department buildings or other city buildings;

17. Any person who shall be found lodging, or attempting to lodge in, or improperly frequenting or hanging around said buildings without the

consent of the chief engineer of the fire department or the janitor of said buildings;

18. Any person, not a fireman, who shall take or use any of the property in the possession of the said fire department without the consent of the chief engineer;

19. Any person who shall be found in the night time lurking suspiciously around any place in said city, and who shall refuse, on demand of any policeman or watchman to give an account of himself;

20. Any person who shall maliciously and unlawfully open or enter any barn, stable or inclosure and take away therefrom, or shall take away from any other place in said city, any horse, team, harness, carriage or vehicle of another, under circumstances not making said offense larceny or a felony;

21. Any person who shall, being a licensed hackman, cartman, owner or driver of any omnibus or porter within said city, knowingly violate any lawful regulation of the common council relating to such persons or vehicles;

22. Any person who shall be found engaged in any public place aforesaid throwing stones or other missiles and endangering persons and property;

23. Any person who shall wantonly and maliciously injure any street or public gas or electric lamp, lamp-post, wire, gas-pipe, or main, or any city pipe, main, hydrant, hose or other works or apparatus for the extinguishment of fires, including electric fire-alarm apparatus, boxes, wires, posts and all appurtenances thereto, or any steam main or other steam boxes or apparatus in any street or public place in said city, for transmission of heat and power, or any street corner signs put up by authority of the common council.

24. Any person who shall be found naked or with person improperly exposed, bathing in any of the canals, basins, streams, races, ponds or waters in said city, in any public place or within sight of any public place between the hours of five in the morning and nine o'clock in the evening.

ARTICLE XIII.

CITY COURT.

Section 280. City court established.

281. Seal.

282. Powers and jurisdiction of city court.

283. Actions for forfeitures, penalties, etc.

284. Form of process; service and return.

- 285. Practice and pleadings; adjournments; appearances.
- 286. Juries.
- 287. Pay of jurors in city court.
- 288. Jury lists.
- 289. Costs and fees.
- 290. Opening judgments on default; stay of proceedings.
- 291. Transcript of judgments to be furnished.
- 292. Punishment for contempts.
- 293. Cash book; monthly statement; payment of moneys.
- 294. Annual report of recorder.
- 295. Docket; receipt of moneys; fees and costs to be paid in advance.
- 296. Certifying and filing documents; copies of, evidence.

§ 280. **City court established.** There is hereby established on and after January first, nineteen hundred and six, the city court of Johnstown, which shall be a court not of record of civil jurisdiction, with the jurisdiction and powers hereinafter conferred. The recorder shall be the judge of such court.

§ 281. **Seal.** Said court shall have a seal which shall contain the words "City Court of Johnstown, New York.—Seal." Such seal shall be furnished by the common council at the expense of the city.

§ 282. **Powers and jurisdiction of the city court.** Said city court shall have and possess the same powers and jurisdiction as courts of justices of the peace, and in addition, in the classes of of* actions triable by or before a justice of the peace, said city court shall have jurisdiction to try and determine such actions where the sum claimed does not exceed five hundred dollars, or in a matter of account where the sum total of the accounts of both parties, proved to the satisfaction of the court, does not exceed one thousand dollars, or, in an action to recover one or more chattels, with or without damages for the taking, withholding or detention thereof, where the value of the chattel or of all the chattels as stated in the affidavit made on the part of the plaintiff, or in the complaint, if no affidavit is made, does not exceed five hundred dollars.

§ 283. **Actions for forfeitures, penalties, etc.** On and after January first, nineteen hundred and six, all actions for the recovery of forfeitures, penalties, taxes, assessments or water rents, as provided in section two hundred and sixty-six, and all proceedings for the annulment or suspension of licenses as provided in section two hundred and sixty-seven,

* So in original.

shall be brought in the city court, and all the provisions of sections two hundred and sixty-six, two hundred and sixty-seven and two hundred and sixty-eight shall apply thereto.

§ 284. **Processes; service, execution, and enforcement thereof.** The processes and mandates of the city court, the service, execution and enforcement thereof, and the proceedings thereunder shall be the same as in courts of justices of the peace of towns, except as otherwise provided in this act. All processes shall be entitled in the city court of the city of Johnstown, issued by the recorder, served by a member of the police force of said city, and made returnable within the times prescribed by the code of civil procedure for justices of the peace of towns. In the service, execution and enforcement of such processes the members of the police force shall possess, in all actions and proceedings in said court, all the powers, be under all the obligations, and discharge all the duties of constables of towns.

§ 285. **Practice and pleadings; adjournments; appearances.** Proceedings, practice and pleadings, including appeals, shall be governed by the provisions of the code of civil procedure relating to justice's courts, except as otherwise provided herein. The provisions of the statutes of this State relating to verified complaints in justices' courts, and the practice thereon, shall apply to this court. At the time of joining issue, the court may adjourn any case coming before it, on its own motion, not exceeding ten days. Appearances in said court, otherwise than in person, shall be governed by the law and practice of courts of record.

§ 286. **Juries.** Jury trials shall be had in said court as in courts of justices of the peace. Juries shall be formed, drawn and summoned for said court in the same manner that juries are formed, drawn and summoned in courts of justice of the peace.

§ 287. **Pay of jurors in city court.** Jurors in the city court shall receive the same compensation as jurors of justices' courts held by justices of the peace.

* § 288. **Jury list.** Whenever a list is made by the proper officer or officers of the persons who are required to serve as jurors as provided in section twenty-eight of this act, a duplicate of such list shall be filed by such officer or officers with the city clerk. The clerk shall immediately make two copies from such list of all the names of jurors therein who are residents of the city, and file one of such copies in the city court.

§ 289. **Costs and fees.** In all actions and proceedings brought in such court the same costs and fees shall be paid, taxed and recovered, as in actions and proceedings before justices of the peace, and in addition thereto there shall be allowed to the prevailing party as an indemnity, in case he has appeared by attorney, the following sums as costs:

* As amended by Chap. 660, Laws of 1910.

1. Judgement for defendant, to each defendant who has answered separately and appeared by a separate attorney, five dollars.

2. Judgment for plaintiff, otherwise than on default, a sum equal to five per centum of the recovery, but not less than five dollars.

3. Judgment for the plaintiff on default, for a sum exceeding fifty dollars, exclusive of costs, to the plaintiff, five dollars.

4. Judgment for the plaintiff on default, for a sum not exceeding fifty dollars, exclusive of costs, to the plaintiff, three dollars.

5. In an action to foreclose a mechanic's lien, whether there be an appearance by the defendant or not, a sum not exceeding twenty dollars, to be fixed by the court and added to the judgment. Section thirty hundred and seventy-six of the code of civil procedure shall have no application to this court.

§ 290. Opening judgments on default; stay of proceedings. Said court shall have power upon two days notice or order to show cause returnable not less than two days, upon such security being given and on such terms as it shall deem just and upon the payment of the costs entered in the judgment, and a sum not to exceed five dollars additional, to open a judgment taken against either party on default; and shall have power to stay all proceedings pending the motion or order. This motion may be made within twenty days after entry of judgment, whether a transcript has been filed in the Fulton county clerk's office or not, and the court shall have power to stay proceedings on any execution issued on said judgment, and to direct the judgment to be cancelled on the books of the county clerk. Said motions shall be made upon affidavits and the proceedings thereon shall be conducted in the manner that proceedings upon like motions in the supreme court are conducted, except as herein otherwise provided.

§ 291. Transcript of judgment to be furnished. The recorder shall, on demand of a party in whose favor judgment shall have been rendered, give a transcript thereof, under his hand and seal of the city court, which may be filed and judgment docketed thereon in the office of the clerk of Fulton county, with like effect as a transcript of the docket of a justice of the peace.

§ 292. Punishments for contempts. The recorder or acting recorder holding city court, while in session, shall have the same powers to preserve order, and to punish for contempts committed in his presence, as are vested in judges of courts of record.

§ 293. Cash books; monthly statement; payment of moneys. The recorder shall keep a cash book of the city court in which shall be entered in detail, with dates, all moneys received and paid out, which book, during seasonable business hours, shall be open to public inspection. On or before the last day of each month, the said recorder shall make out and verify, and deliver to the chamberlain, a detailed statement of all costs

and fees received and earned by said court, and pay over all moneys received by him as judge of such court to the chamberlain; and said chamberlain shall not pay the salary of said recorder until such statements are filed with, and such moneys paid over, to him.

§ 294. **Annual report of recorder.** Said recorder shall, on the thirty-first of December, of each year, make a report, in writing, to the mayor of the costs and fees received by him during the year, and the mayor shall transmit the same to the common council.

§ 295. **Docket; receipt of moneys; fees and costs to be paid in advance.** The recorder shall cause to be kept, in a docket of said court, a complete and accurate record of all process issued and returned to said court, of all proceedings in any action or proceedings brought therein, and of all moneys paid into said court or received by him as judge of such court. He shall receive all moneys payable into said court, including fees and costs, which must be paid in advance.

§ 296. **Certifying and filing documents; copies of, evidence.** The recorder shall affix the seal of said court to all proper documents, shall file all papers delivered for that purpose, and make and certify for any person prepaying the fees therefor, at the same rate allowed to county clerks, copies of any portion of the docket of said court or of any of the records or proceedings thereof, or any document on file therein. Any such copy so certified under the seal of said court, shall be admitted as evidence in all courts of this State, with the same force and effect as copies of the records and proceedings of any court of record when properly certified.

ARTICLE XIV.

CITY ATTORNEY; ACTIONS BY AND AGAINST CITY.

Section 300. General powers and duties of city attorney.

301. Actions in behalf of city.

302. Limitations of actions against the city for negligence.

303. No disqualification as judge or juror because of residence in city.

304. Civil action to recover penalties.

* § 300. **General powers and duties of city attorney.** The city attorney shall be the legal adviser of the common council, mayor and other city boards and officers. He shall prosecute all civil actions and proceedings by, and defend all civil actions and proceedings against the city, and every

* As amended by Chap. 326, Laws of 1916.

board or officer thereof in their official capacity, and perform all other legal services in behalf of the city relating to its affairs. No action or proceeding shall be commenced by the city attorney unless directed by the mayor, common council, or one of the boards of said city. If in any action or proceeding the interests of any city board or officer are in conflict with the interests of the city, the city attorney cannot be required to act in behalf of such board or officer. The costs in actions and proceedings in which the city shall prevail, and which shall be collected from the adverse party, together with all moneys collected or received by him as such attorney other than his salary, shall belong to the city, and shall be paid by him to the city chamberlain within five days after the receipt thereof to be deposited to the credit of the contingent fund of the city. The city attorney may, when authorized by the common council, employ additional counsel at such compensation as may be agreed upon by the common council, to assist in the argument and conduct of important cases or proceedings in which the city is interested, or is a party.

§ 301. **Actions in behalf of city.** The common council may prosecute in the name of the city upon any contract or liability in which the city may be interested, and may sue for all fines, penalties, costs and expenses imposed by this act or by any ordinance of the city.

§ 302. **Limitations of actions against the city for negligence.** All claims against the city for injuries on account of alleged negligence shall be presented to the common council in writing within three months after said injury is received, describing the time, place, cause and extent of the injury and giving the names of all persons present at the time so far as the same are known, and also the nature and extent of the injury, verified by the oath of the claimant, if possible. An omission to present such claim within three months, as above provided, shall be a bar to an action thereon against the city. No action shall be commenced against said city on such claim within two months from the presentation thereof, and no such action shall be commenced after the expiration of one year from such injury.

§ 303. **No disqualification as judge or juror because of residence in city.** No person shall be disqualified from acting as judge, juror or justice by reason of being an inhabitant, or freeholder, in the city of Johnstown in any action or proceeding in which the city is a party or interested.

* § 304. **Civil action to recover penalties.** A civil action to recover a penalty or forfeiture incurred under this act shall be brought in the corporate name of said city, and in any action brought in the city court, it shall be lawful to complain generally for the amount of such penalty or

* As amended by Chap. 326, Laws of 1916.

forfeiture, stating the section of this act or of the ordinances under which the penalty is claimed, and to give the special matter in evidence; and the defendant may answer by simply denying the truth of the complaint, and give the special matter in evidence. If such action be brought in the city court against an alleged owner of real property, the fact that the title to real property comes in question on the pleadings, or appears on the trial, shall not deprive the court of jurisdiction, but may be litigated and determined by the recorder as the right of the case may appear; but such judgment shall not be evidence concerning the title of real property in any other action or proceeding. The first process in any such action brought in the city court shall be by summons, which may be made returnable forthwith, and an execution may be issued immediately on the rendition of judgment. All penalties and forfeitures shall be forthwith, upon collection, paid to the city chamberlain, to the credit of the contingent fund, the recorder, before whom any judgment shall be rendered in favor of or against the city of Johnstown, in any action brought for the recovery of any penalty or forfeiture, or in any other action to which the city of Johnstown shall be a party, shall, within ten days thereafter, file with the city clerk a transcript of such judgment, for which he shall be entitled to charge the sum of twenty-five cents, and include the same in the costs of such judgment; and, in case any such recorder shall omit to file such transcript, or to do any of the acts above described, he shall forfeit the sum of twenty-five dollars for each and every of such omissions, to be recovered in an action by the city against such recorder. Whenever a judgment in favor of the city shall be recovered for twenty-five dollars or upwards, exclusive of costs, a transcript thereof may be filed in the office of the clerk of Fulton county, and thereupon the same shall become a lien upon the property of the defendant in such judgment to the same extent, and may be collected and enforced in the same manner as other judgments recovered before justices of the peace, and transcripts filed in pursuance of the statutes of the state.

ARTICLE XV.

MISCELLANEOUS PROVISIONS.

Section 310. City regarded as town.

311. Liability for village and school district indebtedness.

312. Criminal expenses chargeable to county of Fulton.

313. Judgments against city not enforceable until after annual tax levy.

314. Expenses of amending charter.

315. Charter, ordinances, etc., may be read in evidence.

316. Continuance of ordinances, resolutions, by-laws and regulations.

317. Offices continued or abolished.

318. Repeal; saving clause.

§ 310. **City regarded as town.** The city of Johnstown shall be regarded as a town in the county of Fulton for every purpose not inconsistent with the provisions of this act.

§ 311. **Liability for village and school district indebtedness.** The city of Johnstown shall continue to be liable for the bonded and other indebtedness of the village of Johnstown. The union free school district of the city of Johnstown shall continue to be liable for the bonded and other indebtedness of union free school district number four of the town of Johnstown and common school district number five of the town of Johnstown, and shall pay and discharge the principal and interest thereof as the same shall respectively fall due.

§ 312. **Criminal expenses chargeable to county of Fulton.** The expenses of apprehending, examining, trying, and committing offenders against any law of the State in said city, and of their confinement which are properly chargeable against the county of Fulton, shall be audited and allowed by the board of supervisors of said county and paid in the same manner as if such expenses had been incurred in and by any of the towns of said county.

§ 313. **Judgments against city not enforceable until after annual tax levy.** No judgment recovered against said city shall be enforced by execution until after an annual tax levy has been levied and collected in said city, which said tax was levied subsequent to the docketing of said judgment in the clerk's office of the county of Fulton.

314. **Expenses of amending charter.** The common council is hereby authorized and directed to audit and pay such sum or sums as shall be necessary to pay the expenses incurred in preparing this charter or amendments to this charter for presentation to the legislature.

§ 315. **Charter, ordinances, etc., may be read in evidence.** The charter of the city of Johnstown may be read in evidence from a volume containing such charter, printed by authority of the common council, or from a copy certified by the city clerk, or from the session laws of the State of New York containing the same. Every by-law, ordinance, rule, regulation, resolution, or proceeding of the common council, board of education, board of water commissioners, and board of health of the city may be read and received in evidence either from a copy of the record thereof, certified by the presiding officer and clerk of the common council or board enacting it, or from any printed volume containing the same, certified by the mayor and city clerk that such volume

contains a correct transcript thereof and was printed by authority of the common council.

§ 316. **Continuance of ordinances, resolutions, by-laws and regulations.** All ordinances, resolutions, by-laws and regulations heretofore adopted by the common council, the board of water commissioners, the board of education, or the board of health, not inconsistent with the provisions of this act, or with law, and which are in force at the date of the passage hereof, shall continue in force and effect until amended or repealed.

* § 316-a. **Construction.** Wherever in this act the word "resolution" or the word "resolutions" occurs, in connection with provision or provisions for legislative action by the common council, such words shall be construed as if they were "ordinance" or "ordinances."

§ 317. **Offices continued or abolished.** All the officers of the city of Johnstown now in office, whether elective or appointive, except as otherwise provided in this act, shall continue in office and discharge duties thereof until the end of the terms for which they were elected or appointed, and until their successors are elected or appointed and qualify as provided in this act. On and after the fifteenth day of January, nineteen hundred and six, the office of superintendent of streets and water works shall be abolished, and the powers and duties theretofore exercised and performed by the superintendent of streets and water works shall thereafter be exercised and performed as hereinbefore provided by two appointive officers known respectively as the superintendent of streets and the superintendent of water works. On and after January first, nineteen hundred and six, the offices of justice of the peace and constable shall be abolished. All books, records and papers pertaining to the office of justice of the peace shall, on or before such day, be turned over to the recorder as judge of the city court, and shall thereupon become a part of the records of the city court. All actions and proceedings pending before either of the justices of the peace upon such day shall be deemed transferred to the city court and shall be prosecuted therein to a final determination in the same manner and with the same force and effect as though such actions and proceedings had been originally commenced therein. All processes and notices in the hands of the constables of the city, or of any other person, pertaining to any action or proceeding pending before either of such justices on such day may be executed or served notwithstanding the passage of this act, but shall be made returnable to the city court.

§ 318. **Repeal; saving clause.** Chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety-five, and all acts or parts of acts amendatory thereof and supplemental thereto, and all acts and parts of acts inconsistent with the provisions of this act are hereby re-

* As amended by Chap. 326, Laws of 1916.

pealed. Such repeal shall not revive any act or part thereof heretofore repealed, nor affect any act done, right vested or established, or any suit or proceeding commenced previous to the time when this act takes effect. Nothing herein contained shall be construed so as to destroy, impair or take away any right or remedy acquired by or under any act hereby repealed.

INDEX

References are to Sections.

A

Account—	Section
Of chamberlain, examination of.....	63
Of fees and monies received by city clerk.....	42 sub. 6
Acknowledgments—	
City officials authorized to take.....	27
Acting mayor—	
Alderman-at-large shall be.....	41
Powers and obligations of.....	41
Acting recorder—(See also recorder)	
Appointment of.....	11, 261
A city officer.....	16
Civil action before.....	261
Jurisdiction of.....	261
Reports by.....	261
Salary of	261
Actions—	
To annul or suspend licenses.....	267
In behalf of city.....	301
Civil, to recover penalties, taxes, assessments, etc.....	304, 283
Civil, before acting recorder.....	261
In city court, jurisdiction.....	282
To cancel, set aside or annul assessment.....	138, 136 sub. g.
Exclusive jurisdiction of recorder.....	266, 283
For fines, taxes, etc., body execution may issue.....	266
For local assessments and improvements.....	112
For negligence, limitation of.....	302
For penalties, forfeitures, taxes, assessments or water rates	266, 283, 304
For unpaid taxes, etc., judgments and enforcement.....	111, 266
For unpaid taxes by chamberlain.....	111
Under ordinances, evidence.....	266

Additional—	Section
Assessment for local improvement.....	146
Compensation to certain officers.....	21A.
Duties of appointive officers, and exceptions.....	29
Water supply, procuring.....	185
Water supply, loan for.....	186
Water supply, additional indebtedness for, vote.....	187
Adjournments in city court.....	285
Advertisements and hand bills, regulate, prohibit, etc.....	49 sub. 9
Advertisement and sale of real estate for taxes.....	106
Affidavits, oaths and acknowledgments—	
City officers who may administer.....	27
Agricultural lands, taxation of.....	98
Altering streets.....	104
Alderman—	
At-large.....	10, 11, 12, 43, 45
Compelling attendance at meetings.....	48
Duties of.....	43
Election of, by wards.....	10, 11
Eligibility	14
Fence viewers.....	43
Not to be interested in contracts or purchases.....	25
Liabilities of	77
Number of	10
Official oath.....	19
Terms of office.....	12
Vacancy in office.....	14, 23
Amending charter, expenses of.....	314
Animals, restraint of.....	49 sub. 4
Annual—	
Estimate by mayor.....	66
Meeting of common council.....	44
Meeting of board of water commissioners.....	106
Report of board of water commissioners.....	171
Report by fire chief.....	203 sub. 4
Report of recorder.....	294
Report and estimates by officers.....	65
Settlement of board of water commissioners with chamberlain..	184
Tax levy, determination of.....	66

Annulment—	Section
Of licenses.....	267, 283
Of special assessment.....	143
Apparatus, fire, purchase of.....	201 sub. 3
Appeal—	
From assessment, local improvement.....	134
From city court.....	285
From local assessment, proceedings after.....	135
Appearances in city court.....	285
Application—	
Of Article V to local assessments.....	112
For distribution of surplus from tax sale.....	115
Of income from water rents.....	176
For licenses.....	55
Appointive—	
Officers	10
Officers, additional duties of, and exceptions.....	29
Officers, commencement of term.....	13
Officers, suspension and removal of.....	24
Office, vacancies in.....	23
Appointment—	
Of acting recorder.....	261
Of chief of police.....	191
To city offices, certificates of, signed, attested.....	17
Of commissioners, street opening.....	142
Of commissioners of deeds.....	11
To fill vacancies, time of making.....	11
Of firemen	202
For full time, time of making.....	11
Notice to persons appointed.....	18
Of policemen and special policemen.....	191
Apportionment—	
Of water rents.....	173
Of State and County charges.....	93
Approval of ordinances, by mayor.....	51

Assessor—	Section
Duties of.....	90
Duties of in respect to unpaid taxes.....	103
Election of.....	10, 11
Official oath.....	19
Prepare assessment roll for State and County tax.....	92
Prepare assessment roll for city tax.....	98
Re-assess unpaid taxes.....	104
Salary of.....	21
Shall assess "Farm lands" in separate column.....	137
Term of office.....	12
Assistant—	
Chief of police.....	195
Chief engineers of fire department.....	10, 11, 12, 204, 200
Assessments—(See also assessor.)	
Additional, for local improvement.....	146
By city engineer.....	132, 136 sub. b.
For city taxes.....	98
For cleaning sidewalks and gutters.....	139
Collected, to be set aside to pay bonds.....	136 sub. c.
Collection of, for improvements made by city.....	138
Commissioners, proceeding if objection made.....	143
Commissioners, collection of	145
By commissioners, costs part of.....	144
By commissioners	140, 142
Confirmation of commissioners assessment.....	143, 145
Correction of manifest errors in, within six months.....	113
District of, for local improvement.....	128
Of farm lands.....	137
General provisions relating to.....	91
Local, application of Article V. to.....	122
Local, collection of.....	135, 145
Local, lien on lands.....	135
Local, proceedings after appeal from.....	135
Local improvement, payable wholly or partly by.....	123
Local improvement, additional installments.....	146
Local improvement, unpaid, collection of.....	136 sub. f.
For local improvement, payable in installments.....	136 sub. b., 138
For local improvements, appeal from.....	134
Of omitted property.....	103
Re-assessment, filing of certified copy.....	105
Re-assessment, completion of by assessor.....	104
Re-assessment of void.....	114

Assessments—(See also Assessors)—Continued	Section.
Re-assessment, corrected roll, delivery to chamberlain.....	104
Return of by commissioners.....	142
Roll for local improvement.....	133
Roll, city, preparation and examination of.....	98
Roll, revision of.....	103
State and county, preparation of.....	92
State and county, notice of completion, grievance days.....	92
For street opening improvement.....	112, 144
For State and County tax.....	92
Attendance—	
Of absent water commissioners, may be compelled.....	164
Of members of common council, may be compelled.....	48
Attorney—(See city attorney.)	
Appearances in city court by.....	285
Authorize—	
Improvements, common council to.....	145
Building inspections	50 sub. 8
Audit—(See claims.)	
Awards—	
Payment of	145
In street opening proceedings.....	145

B

Ballot clerks, compensation of.....	21
Bank depository—(See official.)	
Bastardy proceedings, jurisdiction of recorder.....	264
Beggars, restraint of.....	99 sub. 2
Behavior, threatening.....	269 sub. 8
Billiard rooms, etc., licensing.....	49 sub. 8-e.
Board of Education—	
Nine members to be elected.....	10
(General Education Law supersedes charter provisions.)	
Board of Health—	
Appointment of members.....	10, 11
City physician to be health officer.....	10, 251
Meetings of, and place.....	250
Ordinances of to have preference.....	54

Board of Water Commissioners—	Section
Annual meeting	160
Annual report, to be published, contract for.....	171
Annual settlement with chamberlain.....	184
Application of income from water works.....	176
Audit of claims against.....	182
Audit and payment of claims against.....	167, 182
Bond of	165
Books and papers open to public inspection.....	172
Cause surveys to be made for additional supply, maps, etc.....	185
City clerk to be clerk of.....	42 sub. 1.
Collection of water rents.....	174, 175
Compelling attendance of members.....	167
Control of property purchased.....	183
In control of property.....	183
Contract for labor or material.....	180
Contracts made by sealed proposals.....	180
Constitution and organization.....	160
Not to create any salaried office.....	169
May cut and sell trees.....	183
Election of members.....	10, 11
Extend water pipes.....	170 sub. 2
To fix number of laborers and wages.....	169
Fix salary of superintendent.....	21
Hear charges against officers of board.....	24
Issue of bonds by.....	186, 187
Indebtedness in excess of limit.....	187
Judge of election and qualification of its own members.....	163
May sue and collect, or shut off water.....	180
Meetings, regular and special.....	162
Permit to be obtained to connect with water pipes.....	181
Powers and duties of.....	169, 170
Presiding officer	161
Procuring additional supply of water.....	185, 186, 188
Purchase of material.....	180
Record of proceedings to be kept.....	170
Right to use highway or street.....	178
Right to enter buildings to inspect.....	173
To require bond on contracts.....	180
Rules of, quorum, voting.....	163
Sale of water outside city limits.....	179
Sinking fund	177
Temporary president	161
Term of office.....	12

Board of Water Commissioners—Continued	Section.
Vacancies in	23, 166
Water rents	173
Body execution, upon judgment for tax.....	266
Bonds—	
For additional water supply.....	186
Of city, recorded and indexed.....	42 sub. 3, 74
Interest, rate of.....	74
Issue of	74, 186
Issue of for pavements.....	136
Numbered consecutively	74
Official, to fixed by common council.....	20
Payment of in equal annual installments.....	74, 176
For payment of construction of sidewalks by installments.....	138
Registration, record and index of.....	42 sub. 3
Sale of by sealed proposals.....	74, 186
Vote to issue.....	73
Water, sinking fund for payment.....	176, 177
Bond—	
Approval of water commissioners.....	165
By bank depository of city money.....	62
Of chamberlain	61
Of city officers.....	20
Of treasurers of fire companies.....	212
Of treasurer of fire department.....	205
Of water commissioners.....	165
Bonded indebtedness—	
Chamberlain's report of.....	65
Of city of Johnstown, payment of.....	95
Books—	
Of city court.....	293
May be examined by mayor.....	40 sub. 4
To be furnished by city.....	64
Kept by chief of police.....	194
Officers to deliver to successor.....	26
Open to public inspection.....	53, 172
And papers of city, in custody of city clerk.....	42 sub. 2, 53
Borrowing money—	
For current expenses of city.....	72
For local improvement.....	72
Temporary loans	72
For water supply.....	186

Boundaries—	Section
Of city	2
Of lands used for water works.....	183
Of wards—first, second, third and fourth.....	3
Bridges, tax for erection and maintenance of.....	67 sub. b.
Buildings—	
Common council may regulate to prevent fires.....	49 sub. 13
Common council may purchase grounds and erect public buildings, if voted for.....	49 sub. 15
Common council may authorize inspection.....	50 sub. 8
Parks and public buildings, may purchase and build.....	49 sub. 15
Abutting, removal of by owners.....	50 sub. 5
Wooden, prohibited in fire limits.....	213
Wooden, may prevent erection of.....	50 sub. 13
Budget—	
Adopted on or before February 15.....	66
Annual, preparation of.....	66
Limitation as to amount of.....	67 sub. f
Mayor to submit to council on or before Feb. 1.....	66
Reports to be made by officers for.....	65
Business, noxious, to regulate.....	49 sub. 7
By-laws, continuance of.....	316

C

Cabmen, etc., licensing of.....	49 sub. 8-b
Calling out and command of firemen and police by mayor.....	40 sub. 3
Canvass of votes by common council.....	16
Care—	
Protection and preservation of water works, rules for...	49 subs. 1-4
Property, books, etc., of city, provide for.....	49 sub. 2
Cash books of city court.....	293
Cemetery, custody of old, on Green St.....	58
Cemeteries, power to receive by gift.....	49 sub. 2
Certifying and filing documents.....	296
Certified copy of revised assessment roll, filing of.....	105

Certificate—	Section
And deed to purchaser, on tax sale.....	107, 109
Of appointment to city offices.....	17
Charities—(See commissioner of charities.)	
Charter—	
Ordinances, etc., may be read in evidence.....	315
Expenses of amending.....	314
Short title	1
Chamberlain—	
Actions for collection of unpaid taxes.....	111
Accounts, kept by.....	60 subs. 2, 5, 6
May take acknowledgments, administer oaths.....	27
Annual settlement with water commissioners.....	184
Annual settlements, made by.....	60 sub. 8
City tax, collection of.....	101, 102
City officer	10
Custody of all securities.....	60 sub. 9
Delivery of corrected assessment rolls to.....	78
Deliver list of unpaid taxes to assessor.....	103
Deposit of city moneys.....	62
Election of	11
Examination of accounts of.....	63, 184
Fee for conveyance on tax sale.....	109
Monthly reports made by.....	60 sub. 3
Office hours	60
Official bond	61
Payment of library moneys.....	68
Payment of city moneys to.....	78
Penalties paid to.....	304
Powers and duties of.....	60
Proceedings of, collection of unpaid taxes.....	97, 106, 112
Report to mayor.....	65
Records of non-residents kept by.....	60 sub. 7
Sale of property for taxes.....	97, 106, 112
Salary of	21
State and county tax, collection of.....	96, 97
Term of office.....	12
Water rents, collection of.....	174
Water rent rolls, delivery to.....	104

Chief engineer of fire department—(See fire department.) Section

Chief of police—

Appointment of	10, 11
Assistant	195
Bond of	20
Commencement of term.....	13
Executive head of police department, to be.....	194
Make monthly reports.....	194 sub. 4
Powers and duties of.....	194
Keep record in property book.....	194

City—

Boundaries	2
Corporate seal of, and custody.....	42 sub. 2
Divided into districts.....	49 sub. 22
Documents of, custody of.....	42 sub. 2
Elections	15, 73
Finances, right of mayor to recommend.....	40 sub. 5
Judgments against, when enforceable.....	313
Judgment in favor of.....	304
Offices continued or abolished.....	317
Officers, elective or appointive.....	10
Official minutes of.....	42 sub. 2
Officers, manner of choosing.....	10, 11
Property, superintend repair and improvement of.....	122
Poor, expenditures for.....	253

City Attorney—

Additional counsel employed by.....	300
Appointment of	11
Costs collected by.....	300
Legal advisor for all boards and officers.....	300
Powers and duties of.....	300
Prosecute and defend all actions.....	300
Salary of	12
Term of office.....	12

City Clerk—

Take acknowledgments, administer oaths, etc.....	27
Appointment of, in joint session.....	11
Bond of	20
Certify ordinances, etc., to mayor.....	51
Custody and control of seal, books, etc.....	42 sub. 2
Issue licenses	55

City Clerk—Continued

Section

Keep account of fees, etc.....	42 sub. 6
Keep the minutes of meetings.....	42 sub. 1
Keep records of warrants issued.....	182
Oath of office.....	19
Powers and duties.....	42
Register, record and index bonds.....	42 subs. 3, 4
Record of ordinances and resolutions.....	53
Salary of	21
Term of office.....	12

City Engineer—

Appointment of	11
All engineering work for city, to do.....	121, 140
Bond of	20
Inspect all work done under plans prepared by him.....	121 sub. 5
Maps and records kept by.....	121 sub. 1
Powers and duties.....	121
Resident of city at time of appointment, need not be.....	13
Salary of	21
Survey and make assessment for local improvements.....	132, 136
Survey for proposed sewer.....	129
Survey for street extension.....	140
Term of office.....	12

City Physician—

Appointment of	10, 11
Attend city poor.....	251
Duties and powers.....	251
Health officer, to be.....	10, 251
Salary of	21
Term of office.....	12

City Taxes—

Assessment for	98
Collection of	102
Date of warrants for.....	102
Fees on	101
Levying of	99
Notices for	101
Payment of	101
Unpaid taxes	103
Warrant for collection of.....	100

City Court—(See also recorder—action.)	Section.
Actions for penalties, water rents, etc.....	283, 304
Appearances in	285
Cash books of.....	293
Certificates under seal of.....	296
Civil action before acting recorder.....	261
Contempts, punishments for.....	292
Costs on forclosure of mechanics liens.....	289 sub. 5
Costs to defendant.....	289 sub. 1
Costs to plaintiff.....	289 subs. 2, 3, 4
Costs and fees in.....	289
Defaults and stays.....	290
Docket of	295
Established	280
Fees and costs, to be paid in advance.....	295
Juries in	286
Jury lists, how prepared.....	28, 288
Pay of jurors.....	287
Powers and jurisdiction of, amount, etc.....	282
Practice, pleadings, appearances, adjournments.....	285
Process, service, execution, and enforcement.....	284
Seal of	281
Transcripts of judgments.....	291
Term of office.....	12
Cleaning sidewalks and gutters.....	50 sub. 10, 139
Clerk—(See City Clerk.)	
City, to be clerk of common council, water board, board of health, etc.	42
Claims—(See also Negligence.)	
Audit of by common council.....	75
Audit and payment of by board of water commissioners.....	182
Payment of	75
Referred to auditing committee.....	75
Unauthorized, penalty for and a misdemeanor.....	76, 77
Verified, to be.....	75
Collection of taxes.....	94, 97, 100, 102, 106, 111, 135, 136, 138, 145, 174
Collection of water rents.....	174
Compensation—(See Salaries.)	
Council—(See Common Council.)	

Common Council—

Section

Action on ordinances.....	51
Additional assessment for local improvements.....	146
Adoption of annual budget.....	66
Adopt school ordinances.....	239
Appointment of fire wardens.....	206
Annual meeting	44
Audit of claims by.....	75
Ayes and noes to be called and recorded.....	47
Change from volunteer to paid fire department.....	204
Compelling repairs of streets by corporations.....	56
Compelling attendance of members.....	48
Constitution and organization.....	44
Consent or petition of property owners.....	126
Custody of old cemetery grounds.....	58
Declaration of intent to make local improvement.....	125
Designation of official newspapers.....	57
Determining amount of annual tax levy.....	66
Divide city into districts.....	49 sub. 22
Direct surveys and assessments to be made.....	136
Establish and maintain efficient fire department.....	201
Fix salaries	21
Fixing fees for licenses.....	55
Give notice of proposed improvement.....	130
Hear objections to proposed improvement.....	131
Hear and determine appeal from assessment.....	134
Hear charges against officers.....	24
Hear charges against firemen.....	208
Highway commissioners, to be.....	120
Improve streets, etc., at expense of owners.....	50
Issue bonds for local improvement.....	136
May include curbs and gutters in local improvement.....	127
Legislative powers	49
Make district of assessment.....	128
Make necessary ordinances.....	49 sub. 24
Meetings shall be public.....	46
Minutes kept by.....	42 sub. 1
Order special city elections.....	73
Opening, altering, and extending streets.....	140
When ordinances and resolutions take effect.....	52
Presiding officer, mayor.....	45
Provide lock-ups, etc.....	49 sub. 14
Powers in respect to streets and nuisances.....	50
Provide offices and supplies.....	49 sub. 23, 64 sub. 6

Common Council—Continued

Section

Prevent construction over streets or dangerous in regard to fires	50 subs. 13, 14
Purchase all necessary apparatus for fire department, erect buildings, etc.	201
Regulate laying of gas and other pipes.....	50 sub. 11
Require streets to be repaired, etc.....	50 sub. 12
Regulate use of streets.....	49 sub. 3
Remit assessments for farm lands.....	137
Record of ordinances.....	52
Restrain and prevent animals running at large.....	49 sub. 5
Rules, quorum, voting.....	47
Regular meetings of.....	46
Special meetings and how called.....	46
Temporary loans	72
Submit propositions at annual or special elections.....	73
No vote to be taken in executive session.....	46
(See also local Improvement, local assessment, etc.)	

Commissioner of Charities—(See Charities.)

Appointed by mayor.....	11
Bond of	20
Monthly reports of.....	254
Official oath	19
Physician, not to employ, exceptions.....	252
Powers and duties of.....	252
Salary of	21
Term of office.....	12
Keep an office in place approved by council.....	252

Commissioner of deeds—

Administer oaths, take affidavits and acknowledgments.....	27
Appointment of	10, 11
City office, other, may hold.....	14
Fees of	22
Number limited	10
Oath of office.....	19
Term of office.....	12

Commissioners, Water (See Board of Water Commissioners.)

Highway, common council to be.....	120
Street opening, proceedings for appointment.....	142
Street opening, compensation of.....	144
On appeal from local assessment.....	134
(See also Streets.)	

Compensation—	Section
Additional to certain officers.....	21-a
No additional to be given.....	22
Of city officers.....	21
Of city officers, fixed by.....	49 sub. 21
Of commissioners, street opening.....	144
Of members of police department.....	193
Commencement of terms of office.....	13
Companies, fire, organization.....	201 sub. 5
Confirmation—	
Of assessments	145
Of special assessments.....	142
Contempt of court.....	292
Construction—	
Bonds issued for payment of.....	138
Ordinance for	138
Repair, etc., of streets, payable from street fund.....	64 sub. 1
Of sewers, payable from sewer fund.....	64 sub. 2
Of sidewalks, etc.....	138
Of word “resolution” or “ordinance”.....	316-a
Contingent—	
Expenses, tax for.....	67 sub. f
Fund	67 sub. 1
Payments from and to.....	70
Contracts—	
By board of water commissioners.....	187
Contracts for local improvement, letting of.....	136 sub. a
Officers not to be interested in.....	25
Unauthorized	76, 77
Contagious disease, refusal to report.....	269 sub. 5
Consent of property owners, for local improvement, when.....	125
Control—	
Of officers and property of fire department.....	203 sub. 1, 211
Of property used for water works.....	183
Conduct—	
Indecent	269 sub. 4
Riotous	269 sub. 2

	Section
Convey property, power to.....	4 sub. 1
Conveyance on tax sale, fee for.....	109
Condemnation, right to.....	4 sub. 3
For sewer construction	129
For water works	185
Copy records, certified, fees for.....	42 sub. 5
Copies of documents, certified, may be read as evidence.....	296
Corporate—	
Name and powers.....	4
Seal	42 sub. 2, 4 sub. 5
Costs—(See city court.)	
As part of assessment.....	144
Collected by city attorney.....	300
Cost of sewer construction, payable wholly or partly by local assessment	124
County and State tax—(See assessment.)	
County and state charges, apportioned.....	93
Courts of special sessions.....	265
Court, city—(See city court.)	
Criminal—	
Expenses chargeable to county of Fulton.....	312
Jurisdiction of recorder and acting recorder.....	264
Culverts	138
Curbs and gutters, part of certain improvements.....	127, 138
Current expenses, temporary loans for.....	72
Custody—	
Of books and documents of city.....	42 sub. 2
Of old cemetery grounds	57

D

Dangerous property, removal of.....	50 sub. 6
Date of city tax warrants.....	102
Debts, city, unauthorized, recovery of.....	77
Deeds, commissioners of—(See commissioners of deeds.)	

	Section
Deed and certificate to purchaser on tax sale.....	109
Default—	
Costs of judgments, on.....	289
Opening judgment on, city court.....	290
Defend, power to.....	4
Definitions—	
Ordinance	6
Person	6
Repairing of streets.....	123
Resolution	316-a
Streets, highways, avenues, alleys and lanes.....	6
Deficiency in water rents.....	176
Delivery—	
Of corrected assessment rolls to chamberlain.....	104
List of unpaid taxes to assessor.....	103
Property by officer to successor.....	26
Department, Fire—(See fire department.)	
Department, Police—(See police department.)	
Deposit of city moneys.....	62
Designation of funds.....	67
Destroying property	269 sub. 9
Determination of, annual tax levy.....	66
Districts—	
Divisions of city into.....	49 sub. 22
Of assessment for local improvement.....	128
Disease, contagious, refusal to report.....	269 sub. 5
Disapproval of ordinances and resolutions by mayor.....	51
Disorderly—	
Persons, who are, and vagrants.....	269
Persons, jurisdiction of recorder.....	264
Conduct	267
Docket—	
Of city court.....	295
Criminal	263
Drainage of lots.....	50 sub. 1

Section

Driving, immoderate 269 sub. 6

Duties—

Of additional appointive officers.....	29
Of assessor	90
Of city attorney.....	300
Of city clerk.....	42
Of city officers.....	49 sub. 21
Of chamberlain	60
Of city engineer.....	121
Of chief of police.....	194
Of firemen	209
Of fire wardens.....	206
Of mayor	40
Of members of police department.....	194
Of superintendent of streets.....	122
Of superintendent of water works.....	167
Of secretary and treasurer of fire department.....	205
Of treasurers of fire companies.....	212

E

Education—(See General Education Law.)

Elective officers—

List of	10
Vacancies in	23, 166

Elections—

City	14
City, submission of special propositions at.....	73
City, holding special.....	73
Common council to canvass votes.....	16
General election law to govern, except as provided in this act....	15

Eligibility to hold city offices..... 14

Employment of laborers for city..... 122

Engineer, City—(See city engineer.)

Engineers of Fire Department—(See fire department.)

Erection—

Of poles and signs regulated.....	49 sub. 3
Of wooden buildings, prevention of.....	50, sub. 15

	Section
Errors in assessment, correction of within six months.....	113
Escapes, fire, ordered.....	50 sub. 7
Estimate—	
Annual, by mayor.....	66
Annual, and report by officers.....	65
Evidence—	
In actions under ordinances.....	266
Certified copies from city court to be read in.....	296
Charter, ordinances, etc., may be read in.....	315
Records as	53, 172
Examination—	
Of accounts of chamberlain.....	63
Of books and papers by mayor.....	40 sub. 4
Of city assessment rolls.....	98
Of State and County assessment rolls.....	92
Exemption of firemen from jury duty and taxes.....	210
Execution—(See city court.)	
Expenses—	
Of amending charter.....	314
For care of public property, payment of.....	122
Contingent, tax for.....	67 sub. f
Of constructing sewer.....	129
Criminal, chargeable to county.....	312
Current, temporary loans for.....	72
For local improvements, by whom assessed.....	132
Of street improvements, paid by railways.....	123
Traveling, for police.....	193
For water supply pipes.....	181
Expiration of terms of office.....	13
Explosives, handling, licensed.....	49 sub. 8-f
Extending streets	140

F

Failure of title on tax sale, reimbursement.....	110
False fire alarms.....	269 sub. 3

"Farm Lands"—	Section
Assessed for lighting purposes.....	98
Special provisions for assessing.....	137
Taxation of	98
Fence viewers, aldermen to be.....	43
Fences—	
To prevent injury to.....	49 sub. 20
Removal of from within streets.....	50
Fees—	
And perquisites of city officers.....	22
Account of, to be kept.....	42 sub. 6
Added to unpaid taxes.....	96, 99, 101
Of commissioners, local improvement.....	134
For conveyance on tax sale.....	109
For certified copy records.....	42 sub. 5
And costs in city court.....	289
And costs to be paid in advance.....	295
Fines and penalties paid over by recorder.....	268
License	55
Police chargeable to county.....	196
Of police for services, to be paid to chamberlain.....	193
Fighting of dogs.....	269 sub. 7
Fines and penalties for unpaid water rents.....	175
Fines and penalties, collected by recorder.....	268
Filing—	
Certified copy of revised assessment roll.....	105
And certifying documents.....	296
Objections to assessments and improvements.....	98, 130
Plans for street improvements.....	140
Of reports received by mayor.....	66
Survey and map for additional water supply.....	185
Fires, prevention and extinguishment.....	49 sub. 13, 50 sub. 15
Fire alarms, false.....	269 sub. 3
Fire apparatus, purchase of.....	201 sub. 3
Fire companies—(See Fire Department.)	
Fire Department—	
Appointment of firemen.....	202
Assistant engineers of.....	10, 11, 12, 200, 204

Fire Department—Continued	Section
Chief engineer of, appointment.....	10, 11, 200
Chief engineer of, term of office.....	12, 200
Chief engineer of, annual report of.....	203 sub. 4
Chief engineer, duties of.....	203
Chief engineer, general management and control of.....	203
Common council to establish and maintain.....	201 sub. 1
Constituted how	200
Duties of treasurers of companies.....	205
Inspection of	201 sub. 7
Interference with, etc.....	269 subs. 12, 16, 17, 18
Inventory of property.....	203 sub. 2
Maintenance of, payable from fire fund.....	200, 64 sub. c
May organize new or disband old companies.....	201 sub. 5
Misconduct, removal, or suspension of members.....	208
Meetings to elect secretary and treasurer.....	205
Ownership and control of personal property of.....	211
Printed rules and regulations.....	201 sub. 2, 207
Powers of common council in relation to.....	201
Rules and regulations for.....	207
Secretary and treasurer of, election, powers and duties.....	205
Tax for maintenance.....	67 sub. c
Treasurers of companies, bond, etc.....	212
Volunteer companies continued.....	200
Fire escapes, may be ordered for public places.....	50 sub. 7
Fire limits	213
Fire fund	67 sub. c, 64 sub. 4
Firemen—	
Appointment of	202
Duties of	209
Exemption from taxes and jury duty.....	210
May be called out and commanded by mayor.....	40 sub. 3
Paid, power to employ.....	201 sub. 6
Fire wardens	206
Fiscal year of city.....	5
Forfeitures—	
Accrued to water board.....	175
And penalties, action for.....	283

Funds—	Section
Contingent	64 sub. 9, 67 sub. b
Contingent, payments from and to.....	70
Expenditures from limited.....	69
Fire	64 sub. 4, 67 sub. c
Lighting	64 sub. 1, 67 sub. b
Pavement	136 subs. d, e
Police	64 sub. 5, 67 sub. a
Poor	71, 253
Poor, no other expenditures to be made from.....	253
Salaries payable from.....	21
Sewer	64 sub. 3, 67 sub. c
Separate	64 sub. 9
Special	64
Street	64 sub. 2, 67 sub. d
Subdivision and transfers of.....	69
Sinking, for payment of water bonds.....	177

G

Gas pipes, regulation of.....	49 sub. 19
Gambling, suppression of.....	49 sub. 5
Grade—	
Of sidewalks	138
Fix for pipes.....	50 sub. 11
Once established, changed only at expense of city.....	122, 123
Guardians ad litem.....	141
Guarding improvements with signal lights.....	50 sub. 12
Guarding dangerous places.....	49
Gutters—	
Cleaning of	50 sub. 10, 139
And curbs, part of certain improvements.....	127
Improvements to	138

H

Handbills. regulation and circulation of.....	49
Hearing of objections.....	50 sub. 16, 133, 140
Health Officer—(See City Physician.)	
Highways and bridges—(See streets.)	

Highways—	Section
Commissioners of, common council to be.....	120
District, city to be separate.....	120
Used by water commissioners.....	178
Highway tax—(See streets.)	
Hotel and stage runners to be licensed.....	49 sub. 8-c
I	
Ice and snow—	
Compelling removal from sidewalks.....	139
Powers to compel removal.....	50
Removal of by railways.....	56
Improved pavements—(See local improvements.)	
Improvements—(See local improvements, streets, sewers, etc.)	
In-competent property owners, guardians ad litem for.....	141
Income from water works, application of.....	176
Incumbrances, encroachments or obstructions, removal of.....	50 sub. 9
Index—	
Of bonds of city.....	42 sub. 3
Of minutes of common council.....	42 sub. 3
Of ordinances	42 sub. 3
Indecent—	
Exposure	269 sub. 24
Language or conduct.....	269 sub. 4
Indebtedness—	
Bonded railroad	93
Bonded, town of Johnstown share.....	95
Exceeding limit, proceedings for incurring.....	187
School district, liability for.....	311
Tax for	67
Village, liability for	311
Infants and incompetents, guardians for.....	141
Injuring public property.....	269 sub. 23
Injury to trees and property, prevention of.....	49 sub. 20

Inspectors—	Section
Of buildings, authorized.....	50 sub. 8
Of elections, compensation.....	21
Of plumbing, appointment.....	10, 11
Inspection of city work.....	121 sub. 5
Intoxicated persons	269
Interest—	
On assessments for improvements made by city.....	138
On bonds	74
On amount of tax sale, for redemption.....	108
On unpaid tax	111
Issue of bonds.....	74, 186

J

Jails—(See lock-up.)	
Johnstown public library.....	68
Johnstown, town of, railroad indebtedness.....	93
Johnstown, payment of bonded indebtedness of town.....	95
Judge—	
Of city court, recorder to be.....	280
Or juror not to be disqualified.....	302
Judgments—(See also city court.)	
In actions for unpaid taxes.....	111
Against city, when enforceable.....	313
In favor of city, transcript to be filed with city clerk.....	304
Tax for	67 sub. f
For tax, penalty or water rent.....	266
Jury—	
In city court.....	286, 287
Duty and taxes, firemen exempt from.....	210
Lists, preparation of.....	28, 288
Jurisdiction—	
Of city court.....	282
Of recorder, criminal.....	264

L

Laborers—	Section
Employment of	122, 169
Wages to be fixed by Board of Water Commissioners.....	169
Language, indecent.....	269 sub. 4
Lands—	
Petition for commissioners to assess.....	142
Condemnation of for water supply.....	185
Water shed, maps of.....	185
Legislative powers of common council.....	49
Levy—(See taxes.)	
Library, Johnstown public.....	68
Licenses—	
Application for	55
Fees, fixing	55
Proceedings to annul or suspend.....	267
Licensing—	
Billiard rooms, bowling alleys, etc.....	49 sub. 8-e
Cabmen, etc.	49 sub. 8-b
Handling of explosives.....	49 sub. 8-f
Of occupations	49 sub. 8, 55
Peddlers	49 sub. 8-a
Records of	55
Stage and hotel runners.....	49 sub. 8-c
Liens—	
For local assessments.....	135
Limitation of for taxes.....	105
For water rents.....	175
Lighting—	
Fund	64 sub. 1
Of streets, tax for.....	67 sub. e, 99, 198
Signal lights, guarding improvements.....	50 sub. 12
Limits—	
Fire, bounds, may enlarge.....	213
Indebtedness exceeding, proceedings to incurr.....	187

Limitations—	Section
Of actions for negligence.....	302
Of actions to set aside assessment.....	136, 138
Liquor tax money, paid to poor fund.....	71
Loans—(See borrowing money.)	
Lock-up, establishment of.....	49 sub. 14
Local assessment—	
Additional, to meet deficiency.....	146
Against street railway.....	123
Appeal from and re-assessment.....	134, 143
Application of Article V. to.....	112
Consent or petition of property owners.....	126
Collection of	135
For curbs and gutters.....	127, 138
By city engineer, how made.....	132, 136
For cleaning sidewalks and gutters.....	139
District of assessment.....	128
For expenses of street openings, etc.	140, 145
Installment unpaid, all remaining becomes due.....	136 sub. f
Improvements payable wholly or partly by.....	123
Lien on lands of.....	135
Limitation as to actions to set aside.....	136 sub. g
Payable in installments, bonds for.....	136
Proceedings after appeal from.....	135
Re-assessment, commissioners for.....	134, 140, 142
Roll	133
For repair and construction of sidewalks, etc., installments.....	138
For street improvements.....	123
For sewer construction.....	124
Unpaid, re-assessed	103
Upon farm lands, 50% to be remitted.....	137
Local improvement—(See also local assessment.)	
Cleaning sidewalks and gutters.....	139
Construction and repair of sidewalks, curbs and gutters.....	138
Consent or petition of property owners, when necessary.....	125
Cost of sewer construction.....	124
Curbs and gutters to be included in.....	127
Declaration of intent to make, when necessary.....	125
Expense paid by street railways, part.....	123
Expenses to include.....	132
Farm lands, special provisions as to.....	137
May let contract for.....	136 sub. a

Local improvement—(See also local assessment.)—Continued.	Section
May have street superintendent construct.....	136 sub. a
Notice of proposed improvement.....	130
Objections to and decisions thereon.....	130, 131
Opening, altering, extending, discontinuing streets.....	140 to 146
Payable by installments.....	136
Plans and specifications for.....	136
Sewers, special provisions as to.....	137
Street intersections, paid by city.....	123
Unpaid taxes for, collection of.....	135
Lots, drainage of.....	50 sub. 1
Lot numbers, designation of.....	49 sub. 17

M

Mandates—

Of the city court.....	284
And processes of recorder, form of, service.....	263

Maps—

And records kept by city engineer.....	121 sin. 1
Common council to cause to be made of city and wards.....	49 sub. 16
For local improvements.....	130
Of proposed streets.....	136, 140
Of proposed sewers.....	129
Of water shed lands.....	185

Markets and marketing, regulation of.....	49 sub. 12
---	------------

Mayor—

Acting, powers and duties.....	41
Action on ordinances.....	46, 51
Alderman-at-large to be, in absence of.....	41
Annual estimate or budget, to prepare.....	66
An elective officer.....	10, 11
Appointments by	11
Appoint chief of police and policemen.....	191
Appoint chief engineer and assistants of fire department.....	200
Calling out and command of police and firemen.....	40 sub. 3
Call special meeting.....	46
Designate place for office.....	40 sub. 5
Enforce laws and ordinances.....	40 sub. 2
Examine books and papers.....	40 sub. 4
Issue licenses	55

Mayor—Continued	Section
Administer oaths, take acknowledgments, etc.....	27
Oath of office.....	19
Powers and duties of.....	40
Presiding officer of common council.....	45
Recommend concerning finances, government and improve- ments	40 sub. 5
Reports of city officers to.....	65
Salary of	21
Supervise city officers.....	10 sub. 4
Suspend city officers, may.....	24
Sign petition for appointment of commissioners.....	142
Sign warrant for collection of city tax.....	100
Sign statement of unauthorized expenditures.....	77
Term of office.....	12
Veto and right to pass over veto.....	51
Warrant for payments of claims audited, to be signed by.....	75
Meeting—	
Annual, of common council.....	44, 46
Board of Health.....	250
Board of water commissioners.....	160, 162
Common council, regular and special.....	46
Joint meeting of common council and water board.....	11
Public, disturbing	269 sub. 15
Members of Fire Department—(See fire department.)	
Members of Police Department—(See Police department.)	
Minutes of Common Council—(See city clerk.)	
Minutes of Board of Water Commissioners—(See city clerk.)	
Misdemeanor, a	25, 54, 76
Monthly—	
Report and statement of recorder and acting recorder.....	268, 293
Statements of chamberlain, to be published.....	60 sub. 3
Moneys—	
City, to be deposited.....	62
From liquor tax.....	71
Payment of, to chamberlain.....	78
Payment by recorder and acting recorder.....	293

N

Name—	Section
Corporate, of city	4
Of streets, designation of.....	49 sub. 17
Negligence—	
Limitation of action for.....	203
Verified claims for to be filed.....	203
Newspapers—	
Official, designation of.....	57
Publication of ordinances.....	52
New assessments	143
Non-resident taxpayers, record of.....	60 sub. 7
Noxious occupations, restraint of.....	49 sub. 7
Notice—	
To abate nuisances.....	50 sub. 16
Of city tax.....	101
Of completion of assessment roll, state and county tax.....	92
Of completion of assessment roll, city tax.....	98
To clean sidewalks and gutters.....	139
To firemen to show cause why should not be removed.....	208
To inspectors of election.....	223
Of proposed improvements.....	130
To persons appointed or elected.....	18
Of re-assessment of tax.....	114
Of redemption from tax sale.....	108
On removal of city officers.....	24
State and county tax.....	96
Service of, of ordinance for sidewalk construction.....	138
Of street opening improvements.....	140
Of special election.....	73, 188
Of tax sale, of expense of publishing.....	106
Of unpaid city tax.....	101
Of water rents.....	174
Nuisances—	
Prevention of.....	50 sub. 16
Removal of	50
Numbering bonds	74

Number—	Section
Of laborers, employed by superintendent of water works.....	169
Of lots, designation and alteration of.....	49 sub. 17

O

Oath—	
Certain city officers may administer.....	19, 27, 252
Of office, official.....	19

Objections—	
To assessments.....	50 sub. 16, 98
Hearing of, to assessment.....	133
To improvements and decision thereon.....	131
To proposed improvements, filing.....	130

Obstructing sidewalk	50 sub. 13, 269 subs. 10, 13, 14
----------------------------	----------------------------------

Occupations—	
Licensing of	49 sub. 8, 55
Noxious, restraint of.....	49 sub. 7

Offensive substances, prevention of deposit of.....	49 sub. 18
---	------------

Office—(See also officers.)

Common council to provide, rooms, supplies, furniture, etc.	49 sub. 23, 64 sub. 6
Certificates of appointment to.....	17
Of chamberlain in city building.....	60 sub. 1
Hours of chamberlain.....	60
Mayor's, to be designated by him.....	40 sub. 5
Recorder to attend at and have office hours.....	260
Supplies to be furnished.....	49 sub. 23
Terms of	12

Officers—

Annual report and estimate by.....	65, 66
Appointive, to perform additional duties without extra com- pensation	29
Bonds of	20
Certificates of appointment or election.....	17, 18
City	10
City, continued or abolished.....	317
Commencement and expiration of terms of.....	13
Compensation of.....	21, 49 sub. 21

Officers—Continued

Section

Common council prescribes powers and duties and fix compensation of, where not provided otherwise.....	49 sub. 21
Deliver property, books and papers to successor.....	26
Election of	15
Eligibility to.....	14
Fees and perquisites, not to receive.....	22
Of fire department, suspension and removal.....	208
Liability for unauthorized debts.....	77
May administer oaths, etc.	27
Manner of choosing.....	11
Not to hold any other office.....	14
Not to be interested in contracts or purchases.....	25
Penalties for unauthorized contracts and expenditures.....	76
To pay moneys received to chamberlain.....	78
Shall collect and turn over all fees to city.....	22
Suspensions and removals of appointive.....	24
Terms of	12
Vacancies in	23, 166

Officers, powers and duties of—

Acting mayor	41
Alderman	43
Assessor	90
Assistant chief engineers of fire department.....	205
Chamberlain	60
Chief engineer of fire department.....	203
Chief of police.....	194
City attorney	300
City clerk	42
City physician and health officer.....	251
Commissioners of appraisement.....	120
Commissioner of charities.....	252
Commissioner of deeds.....	27
Engineer, city	121
Highway commissioners, common council to be.....	120
Judge of city court.....	264
Mayor	41
Police, assistant chief of.....	195
Policemen	192
Recorder	264
Secretary and treasurer of fire department.....	205
Supervisors	28
Superintendent of water works.....	167

Officers, powers and duties of—Continued	Section
Superintendent of streets.....	122
Water commissioners	170
Official—	
Bonds	20, 61, 165, 205
Bond of policemen.....	20
Bond of water commissioners.....	165
Bond of bank depository.....	62
Bond of chamberlain.....	61
Minutes, custody of.....	42 sub. 2
Newspapers, designation of.....	57
Oaths	19
Year	5
Omitted property, assessment of.....	103
Opening, entending, etc., streets.....	140
Opening judgments on default.....	290
Order, preservation of.....	49 sub. 1
Ordering fire escapes.....	50 sub. 7
Organizing fire companies.....	201 sub. 5
Ordinance—	
Actions under	267
Actions under, exclusive jurisdiction of recorder.....	266
Adoption of	47
Approval or disapproval by mayor.....	51
Construction of word	317
Construction of former.....	316
Definition of	6
Enforcement of	40
Evidence in actions under.....	266
For sidewalk, curb, etc., construction.....	138
May provide for payment of sidewalk in five installments.....	138
May be read in evidence.....	315
Penalties for violation of.....	54
Publication of	52
Power of common council to adopt.....	49, 50
Record book of, and index.....	52
Time of taking effect.....	52
Overseer of poor, commissioner of charities to be.....	252
Ownership and control of property of fire department.....	211

	Section
Owner to remove snow, etc.	139
Paid fire department, may change to.....	201 sub. 6
Parks—	
May purchase grounds for.....	49 sub. 15
May receive by gift.....	4 sub. 6
Pavement fund	136 subs. d, e
Pavements—	
Issue of bonds for	136
Payment by installments for.....	136
Plans and specifications for.....	136
(See also local improvement.)	
Pay roll—	
Of superintendent of streets.....	122
Of superintendent of water works.....	167
Peddlers, licensing of.....	49 sub. 8-a
Penalties—	
And fines for unpaid water rents.....	175
And forfeitures, actions for	283
Civil actions to recover.....	304, 266, 283
For improper payment of funds by treasurer.....	212
For misconduct of members of fire department.....	208
Paid to chamberlain.....	268, 304
For unauthorized expenditures.....	76
For violation of ordinances.....	54
Person, definition of.....	6
Perquisites and fees, city officers not to receive.....	22
Petition—	
Commissioners to assess lands. street opening.....	142
For local improvement.....	126
Physician—(See city physician.)	
Plank road, compelling repairs of.....	56
Pleadings in city court.....	285
Plumbing inspector, appointment of.....	11
Poles, erection of regulated.....	49 sub. 3

Police—(See also chief of police.)	Section
Assistant chief	195
Bonds of	20
Compensation of	193
Fund, tax for.....	67 sub. a
Fees, chargeable to Fulton county.....	196
Lock-up, stations and headquarters.....	49
Mayor call out and command.....	40 sub. 3
Not to receive additional compensation.....	193
Number of uniformed.....	10
Special	191
Traveling expenses of.....	193
Police department—	
Appointments to	191
Establishment of	49 sub. 14
How constituted	190
Maintenance of, payable from police fund.....	64 sub. 3
Powers and duties of members.....	192
Rules and regulations of, to be printed.....	190
Report to common council.....	194 sub. 4
Policemen—(See police.)	
Poll clerks, compensation of.....	21
Poor fund—(See funds.)	
Poor—(See charities, city physician.)	
Process—(See city court.)	
Practice in city court—(See city court.)	
Proposed improvements—(See local improvements.)	
Purchases and contracts, officers not to be interested in.....	25
Public buildings, to purchase and erect.....	49 sub. 15
Public library	68
Publication—	
Of notice of completion of special assessment-roll.....	138
Of notice of intention to open or extend a street.....	140
Of notice of proposed improvement.....	130
Of notice to receive sealed proposals.....	180
Of notice of time and place of hearing before commissioners.....	142
Of report of board of water commissioners.....	171
Of notice to redeem.....	108

Publication—Continued	Section
Of ordinances, when required.....	52
Of special election.....	73, 188, 236
Of tax sale.....	106
Of tax notices.....	96, 101, 104
To be made in official newspapers.....	57

Q

Quorum—

Of board of water commissioners.....	163
Of common council.....	47

R

Railroads—(See railways.)

Railways—

Assessment against for pavements.....	123
Lands may be condemned for sewers.....	129
Power of common council to compel removal of dirt, etc... 49 sub. 10	
Removal of snow and ice by.....	56
Repairs of streets by	56

Records—

And maps kept by city engineer.....	121 sub. 1
Of common council as evidence.....	172
Fees for copying.....	42 sub. 5
Of licenses	55
Of ordinances and resolutions.....	53
Of proceedings of water commissioners.....	170 sub. 6
Of water commissioners as evidence	172

Recorder—(See also city court.)

Actions under ordinances.....	266
Acting—(See acting recorder.)	
Actions before—(See actions.)	
Annual report of.....	294
To attend at office.....	260
Bond of	20
Criminal jurisdiction of.....	264
Disorderly persons, proceedings, penalty, etc.....	264
Docket, to be kept.....	263
Election of	10, 11

Recorder—(See also city court.)—Continued	Section
Eligibility of (to be attorney at law).....	14
Jurisdiction in bastardy proceedings.....	264
Judge of city court.....	280
May hold court of special sessions.....	265
Monthly report by	293
Oath of office.....	19
Powers and duties.....	264
Process, form and service of.....	263
Pay over moneys received by, also fines, fees and penalties..	268, 293
Removal of	262
Salary	21
Term of office.....	12
Vagrants and disorderly persons defined and jurisdiction.....	269
Removal—	
Of appointive city officers.....	24
Of ice and snow by railways.....	56
Of members of fire department.....	208
Of recorder	262
Rents—(See water rents.)	
Repairs—	
Distinguished from new construction.....	123
Of streets by railways.....	56
Of sidewalks, gutters, etc.....	138
By water board	168
Reports—	
Annual of water commissioners.....	171
And estimates, annual by officers.....	65
Of fire chief, annual.....	203 sub. 4
Monthly, by commissioner of charities.....	254
Of police department to common council.....	194 sub. 4
By recorder	268, 293
By superintendent of streets.....	122
By superintendent of water works.....	167
Water commissioners, to be printed, etc.....	171
Residence, change from city or ward.....	19
Resolutions—	
Adoption of	47
Approval or disapproval by mayor.....	51
Construction of word.....	316-a

Resolutions—Continued	Section
Definition	6
Record of	53
When to take effect.....	52
Rewards, police not to receive.....	193
Rules—	
Of board of water commissioners.....	163
For care and protection of water works.....	170 sub. 4, 5
Of common council	47
Of fire department, to be printed.....	201 sub. 2, 207
How read in evidence.....	315
Of police department.....	190

S

Sale—	
Of bonds	74
Of property for taxes.....	97, 106
Surplus from tax.....	115
Of water outside of city.....	179

Salaries—	
All fees, perquisites, etc., to be paid over to city.....	21, 22
Board of water commissioners, may add to for certain officers	21-a
Council to fix	21
Funds, payable from.....	21
No extra compensation to be given.....	21, 22
Payable, monthly	21

Seal—	
Corporate of city, kept by	42 sub. 2
Of city court	281
Power to alter.....	4 sub. 5
Use of	4 sub. 5

Service—	
Of notice by city.....	50 sub. 16, 130, 138
Of process and mandates.....	263, 284
Service of police, fees for.....	193

Sewer—	
Appeal from assessment.....	134
Assessment of expense.....	132, 133
Chargeable to city at large.....	124

Sewer—Continued	Section
Condemnation proceedings for.....	129
Collection of assessment.....	135
Construction payable from sewer fund.....	64 sub. 2, 3
Construction, expense of.....	124, 129
District of assessment for.....	128
Easement, right to acquire.....	4 sub. 3
Fund	64 sub. 3
Fund, tax for.....	67 sub. d
Local assessment for.....	124
Notice of proposed improvement.....	130
Objections to improvement.....	131
Petition not necessary for	125
Regulation of private.....	49 sub. 19
Sidewalks—(See also streets, local improvements.)	
Cleaning of	49, 50 sub. 10, 139
Obstruction, prevention of..	49 sub. 19, 50 sub. 13, 269 subs. 10, 13, 14
Signs, erection of regulated.....	49 sub. 3
Sinking fund from water rents.....	176, 177
Slaughter houses, regulation or prohibition of.....	49 sub. 11
Snow and ice, removal of.....	49, 50, 56, 139
Special—	
Assessment—(See assessment.)	
Elections—(See elections.)	
Funds	64
Meetings—(See common council, board of water water com- missioners, etc.)	
Police—(See police.)	
Provisions as to work in streets.....	168
Sessions, courts of	265
Streets—	
Construction, payable from street fund	64 sub. 1
Definition of	6
Excavation on, by water board	168
Fund, tax for.....	67 sub. b, 99
And highways, right to lay water pipes in.....	178
Intersections, payable by city.....	123
Improvement, authorized, payment of awards.....	145
Improvements, commissioners to assess damages.....	140, 142
Improvements, notice of, expense of, plans for, etc.....	140

Streets—Continued	Section
Improvements, payable by local assessment.....	123
Improvement at expense of owners.....	50
Improvements, payable by railways.....	123
Lighting tax	67 sub. e, 99
Names, designation	49 sub. 17
Opening, extending, altering, discontinuing, etc.....	140
Railways, etc., to repair; to remove snow from.....	56
Railing or guard, to provide for.....	49 sub. 4
Superintendent of, to clean sidewalks, etc.	139
Superintendent of water works to do work in.....	168
Superintendent—(See superintendent of streets.)	
Sweeping of	50 sub. 2
Trees, order planting, trimming or removing.....	50 sub. 3
Use of regulated	49 sub. 3
(See also local improvement.)	
State and county tax—	
Assessment for	92
Assessment rolls, preparation of.....	92
Assessment rolls, notice of completion.....	92
Assessment rolls, examination and review.....	92
Collection of, unpaid	97
Fees on unpaid	96
Payment of	96
Re-assessment	103
Warrant for collection of	94
State and county charges to be apportioned.....	93
Stay of proceedings	290
Stones, throwing forbidden	269 sub. 22
Subdivision of funds	69
Superintendent of streets—	
Appointment of	11
To clean walks, etc.	139
Employ all laborers	122
Oath of	19
Powers and duties of.....	122
Payment of salary.....	122
Reports of work by.....	122
Salary of	21
Term of office	12

Superintendent of water works—	Section
Appointment of	11
Duties of	167
Excavations in streets.....	168
Number of laborers employed by.....	169
Present payrolls	167
Salary of	21, 167
Term of office.....	12
Wages of laborers employed by.....	169
Supplies, furniture, rooms, etc., for city officers....	49 sub. 23, 64 sub. 6
Supervisor—	
Compensation of	21
Election of, by wards	10, 11
Powers and duties	28
Prepare jury lists.....	28
Term of office	12
Suspensions—	
Of appointive city officers.....	24
Of officers or members of fire department.....	208
Sweeping of streets	50 sub 2

T

Tax—(See also assessment.)	
Actions to recover.....	111, 266
City—(See city taxes.)	
Deed—(See tax sale.)	
Determination of annual levy.....	66
Exemption of firemen from.....	210
On "Farm Lands", special provisions as to.....	98, 137
Liquor, paid to poor fund.....	71
Notices	96, 101, 106, 108
Presumptive evidence of regularity.....	111
Purposes of levy, designation of funds.....	67
Sale of property for—(See tax sale.)	
State and County—(See state and county tax.)	
Unpaid, actions and judgment for collection.....	111
Unpaid, assessor to re-assess.....	103
Unpaid, chamberlain to collect, proceedings.....	106
Unpaid, chamberlain to deliver list to assessor.....	103
Unpaid city, notices for.....	101
Unpaid, fees added to.....	96, 101

Tax—(See also assessment.)—Continued	Section
Unpaid, interest upon.....	111
Unpaid local improvement, collection of.....	112, 135
Unpaid, use of when collected.....	111
Warrants, date of city.....	102
Tax Sale—	
Certificate and deed to purchaser.....	107, 109
City may bid in property.....	106
Expense of publishing notices.....	106
Failure of title on, purchaser to be reimbursed.....	110
Levy upon personal property.....	97, 102
Proceedings for	106
Redemption from	108
Surplus from	115
Title of purchasers at sale.....	107
Temporary loans—(See loans.)	
Temporary President—(See board of water commissioners.)	
Terms, definition of	6
Terms of office	12
Terms of office, expiration and commencement of.....	13
Theatres, licensing of.....	49 sub. 8-d
Threatening behavior	269 sub. 8
Title—	
On tax sale—(See tax sale.)	
By condemnation proceedings.....	129
Town—	
City regarded as a.....	310
Of Johnstown, floating and railroad bonded indebtedness.....	93
Of Johnstown, payment of share of bonded indebtedness of.....	95
Transfers of moneys between funds.....	69
Transcript—	
Of judgment in city court.....	291
Of judgment in favor of city to be filed with clerk.....	304
Of records as evidence.....	315
Treasurer—	
Of fire department—(See fire department.)	
Of fire companies, bond and duties of.....	212
Of fire companies, penalty if money paid improperly.....	212

Trees—	Section
Cutting of, on water shed.....	183
Preservation, planting, etc., of.....	50 sub. 3
Prevention of injury to.....	49 sub. 20

Trial—	
In city court—(See city court.)	
On proceedings to annul license.....	276

U

Unauthorized—	
Contracts, claims and expenditures.....	76
Debts, recovery of.....	77
Unpaid taxes—(See tax.)	
Use of streets regulated.....	49 sub. 3

V

Vacancies in office—	
How caused	14
In elective and appointive offices.....	23
When to be filled.....	23, 166
In office of water commissioner.....	166
Vagrancy, to restrain.....	49 sub 6
Vagrants and disorderly persons defined, etc.....	269
Verified complaint, in city court.....	285
Veto—	
Of budget, by mayor	66
Mayor's	51
Violation of ordinances.....	54
Votes, canvass of, by common council.....	16
Voting—	
In board of water commissioners.....	163
In common council.....	47
On expenditures of money, majority in office must.....	47, 163

W

	Section
Wages of laborers, water commissioners to fix.....	169
Wardens, fire	206
Wards, boundaries of, etc.	3
Warrant—	
In payment of claims.....	75, 167, 182
For taxes	94, 100, 102, 145
Water—(See superintendent of water works; water commissioners, etc.)	
Water commissioners—	
At-Large, election of.....	10, 11
At-Large, term of office.....	12
Election of, by wards	11
Term of office	12
Water Commissioners, Board of—(See board of water commissioners.)	
Water rents—	
Action to recover.....	174, 266
Apportionment of	173
Application of income from.....	176
Board to make rules, etc., for.....	170 sub. 3
Collection of	174
Deficiency, if any, tax to cover.....	176
To establish sinking fund, and investment of same.....	177
Liens for	175
May enter buildings and inspect for.....	173
Rolls delivered to chamberlain.....	174
Unpaid, fines and penalties for.....	175
Water works—	
Care of	170 sub. 2
Control of property used for.....	183
(See Water commissioners, board of.)	

Y

Year, official and fiscal.....	5
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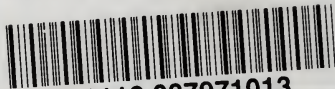
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